

#66

Late Backup

ORDINANCE NO. _____

AN ORDINANCE ESTABLISHING INITIAL PERMANENT ZONING FOR THE PROPERTY GENERALLY KNOWN AS THE WHISPER VALLEY PLANNED UNIT DEVELOPMENT PROJECT COMPRISED OF 2,066 ACRES OF LAND, MORE OR LESS, LOCATED EAST OF FM 973 AND APPROXIMATELY 782 FEET NORTH OF THE INTERSECTION OF FM 969 AND TAYLOR LANE; WITHIN A LIMITED PURPOSE ANNEXATION AREA; AND CHANGING THE ZONING MAP FROM UNZONED TO PLANNED UNIT DEVELOPMENT (PUD) DISTRICT

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. The zoning map established by Section 25-2-191 of the City Code is amended to change the base district from unzoned to planned unit development (PUD) district on the property described in Zoning Case No. C814-2009-0094, on file at the Planning and Development Review Department, as several parcels of land consisting of approximately 2066.284 acres in Travis County, Texas, shown in Exhibit A, (the "Property"). The Property is generally located east of FM 973 and approximately 782 feet north of the intersection of FM 969 and Taylor Lane.

PART 2. This ordinance and the attached Exhibits A through I are the land use plan (the "Land Use Plan") for the Whisper Valley planned unit development district (the "PUD") created by this ordinance. Development of and uses within the PUD shall conform to the limitations and conditions set forth in this ordinance and in the Land Use Plan. If this ordinance and the attached exhibits conflict, this ordinance controls. Except as otherwise provided by this ordinance or by Section 245.004 of the Local Government Code, development within the PUD is subject to the ordinances, regulations, and rules in effect on the effective date of this ordinance for a period conforming to the term set forth in Section 3.04 of the Whisper Valley and Indian Hills Annexation and Development Agreement, effective June 18, 2009, ("Development Agreement") attached as Exhibit J. To the extent applicable, the terms of the Development Agreement apply to development of the Property.

PART 3. The attached exhibits are incorporated into this ordinance in their entirety as though set forth fully in the text of this ordinance. The exhibits are as follows:

- Exhibit A: Description of Property
- Exhibit B: Concept Plan
- Exhibit C: Grow Green Native and Adapted Landscape Plants
- Exhibit D: Protected Headwaters Map

- 1 Exhibit E: CWQZ/PUD Road Crossing Exhibit
2 Exhibit F: Street Section Comparison
3 Exhibit G: Compatibility Standards and Regulations
4 Exhibit H: Zoning Use Summary Table
5 Exhibit I: Site Development Regulations
6 Exhibit J: Development Agreement
7

8 **PART 4. Definitions**
9

10 A. In this ordinance:

- 11
12 1. INDIAN HILLS PROJECT means the land identified in zoning ordinance
13 C14-2009-0089 on file with the City of Austin Planning and Development
14 Review Department.
15

16 **PART 5. Open Space and Parkland**
17

- 18 A. As set forth in Section 3.08(b) of the Development Agreement, the developer
19 shall provide a total of at least 700 acres of publicly-dedicated and private open
20 space.
21
22 B. As set forth in Section 3.08(a)(2) of the Development Agreement, private open
23 space for the benefit of some or all of the residents, tenants, and invitees of the
24 PUD will be provided at a level of 10 acres of open space for every 500 single-
25 family lots platted.
26
27 C. As set forth in Section 3.08(a)(1) of the Development Agreement, parkland
28 dedication requirements for the PUD are satisfied up to total of 9,028 residential
29 units in combined total with the Indian Hills Project. Additional parkland
30 dedication and/or fees will not be required unless the number of residential units
31 exceeds 9,028.
32
33 D. As set forth in Section 3.08 of the Development Agreement, the developer shall
34 provide for community amenities within the open space and parkland areas of the
35 PUD as outlined in the Whisper Valley Master Parkland Agreement on file with
36 the Director of the City of Austin Parks and Recreation Department.
37
38 E. Development within the publicly-dedicated open space area is limited to 27.21
39 acres of impervious cover.
40

- 1 F. Development of a park and ride/transportation terminal use within the open space
2 areas is limited to four acres of impervious cover over a five-acre site.
3
4 G. As set forth in Section 3.08(f) of the Development Agreement, permitted
5 activities within the publicly-dedicated open space areas may include, but are not
6 limited to, those activities outlined in the Whisper Valley Master Parkland
7 Agreement on file with the Director of the City of Austin Parks and Recreation
8 Department.
9
10 H. As set forth in Section 3.08(e) of the Development Agreement, additional
11 activities prohibited in all open space areas include the use of biocides, dumping,
12 and placement or use of underground storage tanks.
13

14 **PART 6. Environmental**

- 15
16 A. Development of the site shall comply with requirements of the Austin Energy
17 Green Building Program (GBP) multifamily, single family, or commercial rating
18 system for a minimum two-star rating. Certification from the GBP shall be based
19 on the version of the rating system in the Austin Energy GBP rating packets.
20
21 B. Each site plan application filed for open space, commercial and multifamily
22 development shall use plant material recommended in the Grow Green Native
23 and Adapted Landscape Plants list attached as Exhibit C. Plants on the Invasive
24 Species/Problem Plants list, attached as part of this exhibit, may not be included.
25
26 C. For each site plan application filed for commercial, industrial, mixed use,
27 multifamily residential or open space areas for the project, the developer shall
28 submit an integrated pest management (IPM) plan that complies with Section
29 1.6.9.2(D) and (F) of the Environmental Criteria Manual to the Director of the
30 Planning and Development Review Department (the "Director") for approval of
31 the plan.
32
33 D. As set forth in Exhibit J of the Development Agreement, the developer of the
34 PUD will plant a sufficient number of trees such that, at ultimate maturity, the
35 tree canopy for the entire site will be equal to or greater than the tree canopy
36 existing on June 18, 2009.
37
38 E. As set forth in Exhibit J of the Development Agreement, the developer of the
39 PUD will use wet ponds, bio-filtration systems and other similar innovative water

quality controls instead of traditional water quality controls when commercially reasonable and cost effective.

- F. As set forth in Section 7.01 and Exhibit J of the Development Agreement, the developer of the PUD will utilize the headwater areas of Gilliland Creek to further treat runoff, and therefore enhance water quality. This will be accomplished primarily by protecting those headwater areas identified in Exhibit D. Headwaters are deemed to be those areas draining less than 320 acres. Permitted development in the headwater drainage areas will include roadway crossings, utility crossings, and water quality facilities.
- G. As set forth in Section 7.02 of the Development Agreement, seven of the 13 Critical Environmental Features (CEFs) identified in Exhibit E shall be preserved with a 150 foot setback as required by Code. The remaining six CEFs will be mitigated according to the Environmental Criteria Manual (ECM) Section 1.3.0(B)(1)(f)(3, 4, 5, or 6).
- The Director may reduce the referenced setbacks if appropriate mitigation is provided. The Director may allow pedestrian facilities (i.e. trails and associated facilities) within the referenced setbacks. Fencing of setbacks is not required.
- H. The use of tar sealants or other pavement sealants is prohibited.
- I. As set forth in Section 8.01(b) of the Development Agreement, any private street developed within the PUD will be treated as a "roadway" for purposes of Sections 25-8-341 (*Cut Requirements*) and 25-8-342 (*Fill Requirements*) of the Code. Street design and construction of streets, alleys, and pedestrian paths may be designed and constructed in accordance with the Standards Criteria Manual, the Standard Specifications Manual, or the standards set forth in Exhibit F.

PART 7. Public Facilities

- A. As set forth in and subject to the terms of Section 3.05(c) of the Development Agreement, the developer shall reserve one site of not more than 5 acres for a Transit Center/Transportation Terminal in one of the approximate locations shown on Exhibit B.
- B. As set forth in and subject to the terms of Section 3.05(d) of the Development Agreement, the developer shall reserve two sites for either public primary or public secondary schools in the approximate locations shown on Exhibit B.

- 1
2 C. As set forth in Section 3.05(e) of the Development Agreement, the developer
3 shall dedicate one two-acre site for a public safety facility site. The developer
4 shall temporarily provide land adjacent to the public safety facility site (not to
5 exceed 1 acre) if required by the City of Austin to facilitate the concurrent
6 dissembling of the ESD Fire Station and construction of the City of Austin Fire
7 Station. The approximate locations of the public safety facility site are shown on
8 Exhibit B and one of the two will be dedicated no later than the approval of the
9 final plat for the phase in which the public safety facility site is located as shown
10 on Exhibit B.
11
12 D. Development of the initial fire station site for the Travis County Emergency
13 Services District #12 (ESD) and the future City of Austin Fire Station shall
14 follow the Covenants, Conditions and Restrictions (CCR's) recorded by the
15 developer of the PUD and shall not be required to follow the City of Austin's
16 Commercial Design Standards.
17
18 E. As set forth in and subject to the terms of Section 3.05(f) of the Development
19 Agreement, the developer shall reserve one site for a library in one of the
20 approximate locations shown on Exhibit B.
21

22 **PART 8. Affordable Housing Program**

- 23
24 A. As set forth in Section 3.14 of the Development Agreement, the developer shall
25 set aside at least 10% of the owner occupied residential units within the PUD for
26 occupancy by households whose income is less than 80% of the median family
27 income in the Austin metropolitan statistical area ("Affordable Ownership
28 Requirement"). Affordable housing provided under this section cannot be used
29 to meet affordable housing requirements for a Vertical Mixed Use bonus or
30 exception and vice-versa.
31
32 B. The Affordable Ownership Requirement for condo-style projects shall be based
33 on number of units and calculated on a condo project-by-condo project basis.
34 Condo style projects shall follow the same multi-bedroom unit requirements as
35 are set forth for apartments in Paragraph E, below. For other forms of single
36 family housing (either attached or detached), affordability shall also be calculated
37 based on the number of units and, to the extent economically feasible, shall be
38 spread across the various product types within the PUD. Although there shall be
39 no requirement that each project or plat within the PUD contain a specific
40 number of affordable units, the Developer shall be responsible for ensuring that

ultimately the entire PUD contains the requisite number of affordable ownership units. The Developer shall report to the Director of the Neighborhood Housing Community Development on the status of the number and location of affordable ownership units within the PUD on a semi-annual basis commencing on the date the first plat is recorded.

- C. Notwithstanding the foregoing, if the Developer provides more affordable units in any given apartment project than the ten percent required per Paragraph D, below, then the number of units required to meet the Affordable Ownership Requirement in the PUD shall be reduced (i) on a 1.5:1 ratio for up to three percent of the ten percent Affordable Ownership Requirement for the PUD; and (ii) on a 4:1 ratio for up to an additional two percent of the ten percent Affordable Ownership Requirement for the PUD. Provided however, in no event shall the number of units required to meet the Affordable Ownership Requirement in the PUD be reduced below five percent of total ownership units through the method described above.
- D. As set forth in Section 3.14 of the Development Agreement, the developer shall set aside at least 10% of the rental units for multifamily residential within the PUD for occupancy by households whose income is less than 60% of the median family income in the Austin metropolitan statistical area ("Affordable Rental Requirement"). Affordable housing provided under this section cannot be used to meet affordable housing requirements for a Vertical Mixed Use bonus or exception and vice-versa.
- E. As set forth in Section 3.14(b) of the Development Agreement, the Affordable Rental Requirement shall be based on number of units and calculated on an apartment project-by-apartment project basis. The ratio of affordable single units to affordable multi-bedroom units shall be equal to the ratio of total single to total multi-bedroom units for the applicable project. The affordable units within any given apartment project shall be interspersed with market rate units.

PART 9. Transportation and Bicycle Plan

- A. The PUD shall provide internal bicycle routes for access and continuity to existing or planned bicycle routes as identified in the Austin 2020 Bicycle Plan as of the effective date of this ordinance for the following routes:
- a. Segment #71.05 - FM 973N from US 290 E to FM 969;

- b. Segment #14.24 - New road from FM 973 to Taylor Lane;
- c. Segment #77.05 - Taylor Lane from Blake Manor to FM 969; and
- d. Segment #971.14 - Gilleland Creek Greenway from FM 973 to FM 969.

B. The number of bicycle parking spaces shall equal at least five percent of required motor vehicle parking. At least half the total spaces shall be either (a) Class I racks/parking spaces as defined in the City Transportation Criteria Manual or (b) spaces in a locked bicycle storage room with a means to secure individual bicycles within the room. Review and approval of bicycle parking placement by the City of Austin Bicycle Program or any successor program is required prior to site plan approval.

C. A building containing one or more office uses that total 25,000 square feet or more shall include shower facilities for bicycle riders. A building containing more than 25,000 square feet, but less than 50,000 square feet of office uses shall provide one private unisex facility. A building containing more than 50,000 square feet, but less than 100,000 square feet of office uses shall provide one private facility for each gender. A building containing more than 100,000 square feet, but less than 500,000 square feet of office uses shall provide private shower facilities with two showers for each of both sexes. A building containing more than 500,000 square feet of office uses shall provide private shower facilities with three showers for each of both sexes. The facilities shall be separate from the office toilet facilities and include an area for changing clothes and storing personal items. The facilities may be located outside of the building in a common area accessible to all buildings subject to this requirement. The shower facilities shall also be provided if the office building includes retail uses as well. Shower facilities need only be accessible to employees in the building.

D. A publicly accessible 12-foot wide trail generally following the alignment shown on Appendix J of the 2009 Austin Trails Master Plan shall be provided within the designated public open space areas of the PUD and shall be dedicated when the parkland is dedicated to the City of Austin.

E. As set forth in Section 8.01(c) of the Development Agreement, alternative street standards including street tree and building placement are attached as Exhibit F.

F. A site plan or building permit may not be approved, released, or issued, if the completed development or uses in the PUD, considered cumulatively with all

existing or previously authorized development and uses, generate traffic that exceeds the total traffic generation for the PUD specified in that certain Traffic Impact Analysis ("TIA") prepared by Bury + Partners, Inc., dated July 2009, or as amended and approved by the Director. All development in the PUD is subject to the recommendations contained in the memorandum from the Transportation Review Section of the Planning and Development Review Department dated June 7, 2010 and the Declaration of Traffic Phasing Restrictive Covenant recorded in the real property records of Travis County, Texas. The TIA shall be kept on file at the Planning and Development Review Department.

- G. As set forth in Section 8.02 of the Development Agreement, driveways and curb cuts shall be permitted from every lot within a single-family residential area. Notwithstanding the foregoing, driveways and curb cuts to public rights-of-way maintained by the Texas Department of Transportation may be subject to driveway and access standards established by the Texas Department of Transportation. The City may prohibit certain driveways and curb cuts if such driveways and curb cuts create a traffic safety hazard.
- H. A collector street shall remain a collector street for its entire length. A collector street shall not transition to a local street.
- I. Right-of-way shall be dedicated at platting in at least two locations to provide connectivity to the area north of the PUD.
- J. At least three sections of right-of-way shall be dedicated at platting along both sides of Braker Lane to allow busses to pull off of Braker Lane without stopping traffic.
- K. All internal street sections must comply with the proposed alternative street sections shown in Exhibit F or with the Transportation Criteria Manual (TCM). A collector street constructed under the TCM shall include bicycle lanes.

PART 10. Signage

- A. The developer shall have the right to install and maintain project identity signage within the open space as outlined in the Whisper Valley Master Parkland Agreement on file with the Director of the City of Austin Parks and Recreation Department.

1 **B.** Signage within the Commercial District of the PUD shall be governed by the
2 requirements set forth in the Commercial Sign District of the City Code. Signage
3 within the Mixed Use and Residential Districts shall be governed by the
4 requirements set forth in the Neighborhood Commercial Sign District of the City
5 Code.
6

7 **PART 11. Continuation of Existing Uses and Activities:** As set forth in Section 3.03 of the
8 Development Agreement, the following land uses and activities that currently exist within the
9 PUD as of the date of this ordinance shall be allowed to continue operating in the same
10 manner, upon limited purpose annexation of the PUD into the City: (i) agricultural (including
11 without limitation, ranching and farm uses); and (ii) hunting. Hunting within the PUD shall
12 be prohibited after issuance of the first building permit for any part of the PUD.
13

14 **PART 12. Code Modifications.** In accordance with Chapter 25-2, Subchapter B, Article 2,
15 Division 5 (*Planned Unit Developments*) of the Code, the following site development
16 regulations apply to the PUD instead of otherwise applicable City regulations.
17

18 **A. Zoning**

- 19 1. Chapter 25-2, Subchapter C, Article 10 (*Compatibility Standards*) of the
20 Code does not apply to the PUD; such regulations are controlled by
21 Exhibit G of this ordinance.
22
- 23 2. Section 25-2-243 (*Proposed District Boundaries Must Be Contiguous*) of
24 the Code does not apply to the PUD.
25
- 26 3. Section 25-2-491 (*Permitted, Conditional, and Prohibited Uses*) of the
27 Code does not apply to the PUD; such regulations are controlled by
28 Exhibit H of this ordinance.
29
- 30 4. Section 25-2-492 (*Site Development Regulations*) of the Code does not
31 apply to the PUD; such regulations are controlled by Exhibit I of this
32 ordinance.
33

34 **B. Subdivision**

- 35 1. Subsection (B) of Section 25-4-33 (*Original Tract Requirement*) of the
36 Code is modified to provide that a portion of an original tract may be
37 included in a subdivision application.
38
39
40

1 2. Section 25-4-154 (*Street Design and Construction*) of the Code is modified
2 to provide that streets, alleys, and pedestrian paths shall be designed and
3 constructed in accordance with Exhibit F of this ordinance.

4
5 3. Section 25-4-171 (*Access to Lots*) of the Code is modified to allow the
6 Director to grant a variance to Subsection (A) of this section if the Director
7 determines that an adequate alternative for resident and emergency access
8 is available.

9
10 C. Transportation

11
12 1. Section 25-6-171 (*Standards for Design and Construction*) of the Code
13 does not apply to the PUD; such regulations are controlled by Exhibit F of
14 this ordinance.

15
16 D. Environmental

17
18 1. Subsection (B)(1) of Section 25-8-262 (*Critical Water Quality Zone Street*
19 *Crossings*) of the Code is modified to allow an arterial or collector street to
20 cross a major critical water quality zone in 4 locations as indicated in
21 Exhibit E of this ordinance without being identified in the Transportation
22 Plan.

23
24 2. Subsection (B)(2)(a) of Section 25-8-262 (*Critical Water Quality Zone*
25 *Street Crossings*) of the Code is modified to allow an arterial or collector
26 street to cross an intermediate waterway critical water quality zone within
27 2,500 feet on the same waterway in 4 locations as indicated in Exhibit E of
28 this ordinance.

29
30 3. Section 25-8-42 (*Administrative Variances*) of the Code is modified to
31 allow the Director to grant a variance from the requirements of Chapter 25-
32 8, Subchapter A, Article 7, Division 3 (*Construction on Slopes*).

33
34 4. Subsection (C) of Section 25-8-394 (*Uplands Zone*) and Section 25-2-492
35 (*Site Development Regulations*) of the Code are modified to allow for
36 development intensity to be transferred; and allowing for maximum
37 impervious cover limitations as described on Exhibit I.

38
39 5. Section 25-8-604 (*Development Application Requirements*) of the Code
40 and Section 3 (*Tree Surveys*) of the Environmental Criteria Manual are

1 modified to allow for mesquite trees in the right-of-way area that are 8"
2 and larger to be cataloged only and not surveyed. The mitigation for each
3 cataloged mesquite will be a 2" replacement tree. Areas outside of the
4 right-of-way will be surveyed at site plan and will comply with City Code.
5

6 E. Signage
7

- 8 1. Section 25-10-82 (*Determination of Applicable Sign District*) of the Code
9 is modified to allow for signage within the Commercial District to be
10 governed by the requirements set forth in the Commercial Sign District of
11 the City Code. Signage within the Mixed Use District and Residential
12 District shall be governed by the requirements set forth in the
13 Neighborhood Commercial Sign District of the City Code.
14
15

16 **PART 13.** This ordinance takes effect on _____, 2010.
17
18

19 **PASSED AND APPROVED**
20

21 §

22 §

23 _____, 2010 §

24 _____
25 Lee Leffingwell
26 Mayor
27

28 **APPROVED:** _____

29 Karen M. Kennard
30 Acting City Attorney
31

ATTEST: _____

Shirley A. Gentry
City Clerk

"Exhibit A"

2066.284 ACRES
WHISPER VALLEY

FN NO. 10--101(KWA)
MAY 17, 2010
BPI JOB NO. 1758-02

DESCRIPTION

OF 2066.284 ACRES OF LAND OUT OF THE OLIVER BUCKMAN SURVEY NO. 40, ABSTRACT NO. 60; THE JAMES GILLELAND SURVEY NO. 13, ABSTRACT NO. 12; AND THE JOHN BURLESON SURVEY NO. 33, ABSTRACT NO. 5, SITUATED IN TRAVIS COUNTY, TEXAS, BEING THAT CERTAIN 247.156 ACRE TRACT CONVEYED TO CLUB DEAL 120 WHISPER VALLEY, LIMITED PARTNERSHIP, BY DEED OF RECORD IN DOCUMENT NO. 2006152073, OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS; THOSE CERTAIN 548.08 ACRE, 164.73 ACRE, 72.50 ACRE, 750.533 ACRE, 16.00 ACRE, 165.984 ACRE TRACTS OF LAND CONVEYED TO CLUB DEAL 120 WHISPER VALLEY, LIMITED PARTNERSHIP BY DEED OF RECORD IN DOCUMENT NO. 2006152076 OF SAID OFFICIAL PUBLIC RECORDS; AND THAT CERTAIN 101.46 ACRE TRACT CONVEYED TO CLUB DEAL WHISPER VALLEY, LIMITED PARTNERSHIP, BY DEED OF RECORD IN DOCUMENT NO. 2006231899, OF SAID OFFICIAL PUBLIC RECORDS; SAID 2066.284 ACRES BEING MORE PARTICULARLY DESCRIBED, IN TWO PARTS, BY METES AND BOUNDS AS FOLLOWS:

TRACT I - 1819.188 ACRES

BEGINNING, at a TxDOT Type I concrete monument found in the easterly right-of-way line of F.M. Highway No. 973 (right-of-way varies), at the southwesterly corner of that certain 2.0 acre tract of land conveyed to Lyle and Christine Hutchinson by Deed of record in Volume 13380, Page 393 of the Real Property Records of Travis County, Texas, for the northwesterly corner of said 164.73 acre tract and hereof;

THENCE, leaving said easterly right-of-way line of F.M. Highway No. 973, along the southerly line of said 2.0 acre tract and the southerly line of that certain 10.0 acre tract conveyed to Veterans Land Board of the State of Texas by Deed of record in Volume 7085, Page 418 of the Deed Records of Travis County, Texas, being the northerly line of said 164.73 acre tract, for a portion of the northerly line hereof, the following two (2) courses and distances:

- 1) S58°38'32"E, a distance of 1394.58 feet to a 1/2 inch iron rod with cap set at the southeasterly corner of said 10.0 acre tract, for an angle point;
- 2) N27°26'53"E, a distance of 299.02 feet to a 1/2 inch iron rod with cap set in the southerly line of that certain 100.050 acre tract conveyed to Hen-Ball Investments, L.P., by Deed of Record in Document No. 2004041963 of said Official Public Records, at the northeasterly corner of said 10.0 acre tract, for an angle point;

THENCE, S62°28'22"E, along the southerly line of said 100.050 acre being the northerly line of said 164.73 acre tract, for a portion of the northerly line hereof, a distance of 3702.85 feet to a 1/2 inch iron rod found at the northeasterly corner of said 164.73 acre tract, being an angle point in the northerly line of said 548.08 acre tract, for an angle point;

THENCE, N62°51'29"E, continuing along the southerly line of said 100.050 acre tract, being the northerly line of said 548.08 acre tract, for a portion of the northerly line hereof, a distance of 75.12 feet to a 1/2 inch iron rod found at the southwesterly corner of that certain 196.60 acre tract conveyed to Robert M. Schoolfield, by Deed of record in Volume 13059, Page 427 of the Real Property Records of Travis County, Texas, for an angle point;

THENCE, along the southerly line of said 196.60 acre tract and that certain 90.000 acre tract conveyed to Glad Tidings Assembly of God, Inc., by Deed of Record in Document No. 2004034603 of said Official Public Records, being the northerly lines of said 548.08 acre tract and said 72.50 acre tract, for a portion of the northerly line hereof, the following three (3) courses and distances:

- 1) S62°27'39"E, a distance of 426.01 feet to a 1/2 inch iron rod with cap found at the northwesterly corner of said 72.50 acre tract, for an angle point;
- 2) S62°18'06"E, a distance of 1509.13 feet to a 1/2 inch iron rod with cap set for an angle point;
- 3) S63°32'25"E, a distance of 54.46 feet to a 1/2 inch iron rod with cap found at the northeasterly corner of said 72.50 acre tract, being the northwesterly corner of that certain remainder of 423.32 acre tract conveyed to Ella Louise Lind, by Deed of record in Document No. 1999120186 of said Official Public Records, for an angle point;

THENCE, leaving the southerly line of said 90.000 acre tract, along the westerly line of said remainder of 423.32 acre tract, being the easterly lines of said 72.50 acre tract and said 548.08 acre tract, for a portion of the northerly line hereof, the following two (2) courses and distances:

- 1) S28°11'49"W, a distance of 2098.37 feet to a 1/2 inch iron rod with cap set at the southeasterly corner of said 72.50 acre tract, being the northeasterly corner of said 548.08 acre tract, for an angle point;
- 2) S28°51'16"W, a distance of 924.02 feet to a 1/2 inch iron rod found at an angle point in the northerly line of said 750.533 acre tract, for an angle point;

THENCE, leaving the easterly line of said 548.08 acre tract, along the southerly line of said remainder of 423.32 acre tract, being the northerly line of said 750.533 acre tract, for a portion of the northerly line hereof, the following four (4) courses and distances:

- 1) S61°57'29"E, a distance of 2116.00 feet to a 1/2 inch iron rod found for an angle point;
- 2) N28°16'28"E, a distance of 664.18 feet to a 1/2 inch iron rod with cap set for an angle point;
- 3) S61°55'40"E, a distance of 231.92 feet to a 1/2 inch iron rod with cap set for an angle point;
- 4) S62°13'46"E, a distance of 1383.28 feet to a 1/2 inch iron rod found at the northeasterly corner of said 750.533 acre tract, being in the westerly right-of-way line of Taylor Lane (80' R.O.W.), for the northeasterly corner hereof;

THENCE, along said westerly right-of-way line of Taylor Lane, being the easterly line of said 750.533 acre tract, for a portion of the easterly line hereof, the following three (3) courses and distances:

- 1) Along a non-tangent curve to the left, having a radius of 14701.15 feet, a central angle of 01°22'03", an arc length of 350.85 feet, and a chord of which bears S27°23'38"W, a distance of 350.84 feet to a 1/2 inch iron rod found at the end of said curve;
- 2) S26°39'38" W, a distance of 454.04 feet to a 1/2 inch iron rod found at the beginning of a non-tangent curve to the right;
- 3) Along said curve, having a radius of 93712.13 feet, a central angle of 00°13'16", an arc length of 361.66 feet, and a chord of which bears S26°51'11"W, a distance of 361.66 feet to a 1/2 inch iron rod found at the northeasterly corner of that certain 0.23 acre tract conveyed to Manville Water Supply Corporation, by Deed of record in Volume 12641, Page 1561 of said Real Property Records, for an angle point;

THENCE, leaving said westerly right-of-way line of Taylor Lane, along the northerly, westerly and southerly lines of said 0.23 acre tract, being the easterly line of said 750.533 acre tract, for a portion of the easterly line hereof, the following three (3) courses and distances:

- 1) N62°38'36"W, a distance of 100.15 feet to a 1/2 inch iron rod with cap set at the northwesterly corner of said 0.23 acre tract, for an angle point;

- 2) S26°51'53"W, a distance of 100.15 feet to a 1/2 inch iron rod found at the southwesterly corner of said 0.23 acre tract, for an angle point;
- 3) S62°42'38"E, a distance of 100.29 feet to a 1/2 inch iron rod found at the southeasterly corner of said 0.23 acre tract, being in said westerly right-of-way line of Taylor Lane, for an angle point;

THENCE, along said westerly right-of-way line of Taylor Lane, being the easterly lines of said 750.533 acre tract, said 16.00 acre tract, and said 101.46 acre tract, for a portion of the easterly line hereof, the following thirteen (13) courses and distances:

- 1) Along a non-tangent curve to the right, having a radius of 93712.13 feet, a central angle of 00°16'05", an arc length of 438.39 feet, and a chord of which bears S27°08'46"W, a distance of 438.39 feet to a 1/2 inch iron rod found at the end of said curve;
- 2) S27°15'08"W, a distance of 2556.92 feet to a 1/2 inch iron rod found at the northeasterly corner of said 16.00 acre tract, for an angle point;
- 3) S27°15'21"W, a distance of 10.55 feet to a 1/2 inch iron rod with cap set at a point of curvature of a curve to the left;
- 4) Along said curve, having a radius of 210712.15 feet, a central angle of 00°05'47", an arc length of 354.74 feet, and a chord of which bears S27°12'27"W, a distance of 354.74 feet to a 1/2 inch iron rod found at the point of compound curvature of a curve to the left, being the southeasterly corner of said 16.00 acre tract;
- 5) Along said curve, having a radius of 210712.15 feet, a central angle of 00°05'48", an arc length of 355.36 feet, and a chord of which bears S27°06'46"W, a distance of 355.36 feet to a 1/2 inch iron rod found at the end of said curve, for an angle point;
- 6) S27°06'32"W, a distance of 384.22 feet to a 1/2 inch iron rod found at the beginning of a non-tangent curve to the left;
- 7) Along said curve, having a radius of 21059.69 feet, a central angle of 02°10'54", an arc length of 801.87 feet, and a chord of which bears S25°53'03"W, a distance of 801.82 feet to a 1/2 inch iron rod found at the end of said curve;
- 8) S24°42'43"W, a distance of 338.31 feet to a 1/2 inch iron rod with cap found at the southeasterly corner of said 750.533 acre tract, being the northeasterly corner of said 101.46 acre tract, for an angle point;

- 9) S24°45'18"W, a distance of 89.99 feet to a 1/2 inch iron rod found at the beginning of a non-tangent curve to the right;
- 10) Along said curve, having a radius of 13545.14 feet, a central angle of 02°57'05", an arc length of 697.70 feet, and a chord which bears S26°13'52"W, a distance of 697.63 feet to a 1/2 inch iron rod found at the end of said curve;
- 11) S27°42'26"W, a distance of 240.29 feet to a 1/2 inch iron rod found at an angle point;
- 12) S25°04'23"W, a distance of 99.53 feet to a 1/2 inch iron rod found at an angle point;
- 13) S27°42'26"W, a distance of 1880.80 feet to a calculated point on the approximate centerline of Gilleland Creek, for the southeasterly corner hereof, from which a 1/2 inc iron rod found at an angle point in said westerly right-of-way line bears S27°42'26"W, a distance of 1568.12 feet;

THENCE, leaving said westerly right-of-way line, along the approximate centerline of Gilleland Creek, being the southerly lines of said 101.46 acre tract and said 750.533 acre tract, for a portion of the southerly line hereof, the following ninety-five (95) courses and distances:

- 1) N74°54'22"W, a distance of 72.42 feet to a calculated point, for an angle point;
- 2) S87°27'20"W, a distance of 49.55 feet to a calculated point, for an angle point;
- 3) S72°06'15"W, a distance of 97.73 feet to a calculated point, for an angle point;
- 4) N60°03'23"W, a distance of 55.23 feet to a calculated point, for an angle point;
- 5) N18°05'14"W, a distance of 69.40 feet to a calculated point, for an angle point;
- 6) N01°52'31"W, a distance of 66.51 feet to a calculated point, for an angle point;
- 7) N28°35'56"W, a distance of 40.67 feet to a calculated point, for an angle point;
- 8) N42°15'00"W, a distance of 135.79 feet to a calculated point, for an angle point;
- 9) N27°09'47"W, a distance of 47.76 feet to a calculated point, for an angle point;

- 10) N54°26'56"W, a distance of 39.65 feet to a calculated point,
for an angle point;
- 11) N82°14'06"W, a distance of 65.65 feet to a calculated point,
for an angle point;
- 12) N46°06'32"W, a distance of 27.98 feet to a calculated point,
for an angle point;
- 13) N31°32'58"W, a distance of 27.94 feet to a calculated point,
for an angle point;
- 14) N05°19'44"E, a distance of 48.36 feet to a calculated point,
for an angle point;
- 15) N10°59'18"W, a distance of 42.27 feet to a calculated point,
for an angle point;
- 16) N24°46'37"W, a distance of 31.22 feet to a calculated point,
for an angle point;
- 17) N23°33'56"E, a distance of 48.12 feet to a calculated point,
for an angle point;
- 18) N33°25'00"E, a distance of 53.14 feet to a calculated point,
for an angle point;
- 19) N42°33'43"E, a distance of 50.30 feet to a calculated point,
for an angle point;
- 20) N54°07'33"E, a distance of 95.80 feet to a calculated point,
for an angle point;
- 21) N32°57'27"E, a distance of 36.48 feet to a calculated point,
for an angle point;
- 22) N26°02'14"E, a distance of 41.61 feet to a calculated point,
for an angle point;
- 23) N09°51'27"E, a distance of 76.18 feet to a calculated point,
for an angle point;
- 24) N01°43'45"E, a distance of 37.41 feet to a calculated point,
for an angle point;
- 25) N04°13'11"W, a distance of 45.91 feet to a calculated point,
for an angle point;
- 26) N01°52'49"E, a distance of 41.93 feet to a calculated point,
for an angle point;
- 27) N65°35'42"E, a distance of 94.19 feet to a calculated point,
for an angle point;

- 28) N49°41'41"E, a distance of 50.69 feet to a calculated point,
for an angle point;
- 29) N07°41'41"E, a distance of 36.84 feet to a calculated point,
for an angle point;
- 30) N27°33'01"W, a distance of 40.07 feet to a calculated point,
for an angle point;
- 31) N07°48'42"W, a distance of 36.36 feet to a calculated point,
for an angle point;
- 32) N45°41'21"E, a distance of 45.65 feet to a calculated point,
for an angle point;
- 33) N58°06'41"E, a distance of 36.66 feet to a calculated point,
for an angle point;
- 34) N24°11'14"E, a distance of 42.59 feet to a calculated point,
for an angle point;
- 35) N03°38'51"W, a distance of 90.98 feet to a calculated point,
for an angle point;
- 36) N47°42'29"W, a distance of 52.22 feet to a calculated point,
for an angle point;
- 37) N65°40'01"W, a distance of 94.58 feet to a calculated point,
for an angle point;
- 38) N57°18'12"W, a distance of 31.69 feet to a calculated point,
for an angle point;
- 39) N75°39'27"W, a distance of 93.87 feet to a calculated point,
for an angle point;
- 40) N70°13'14"W, a distance of 44.12 feet to a calculated point,
for an angle point;
- 41) N65°05'05"W, a distance of 58.53 feet to a calculated point,
for an angle point;
- 42) N59°44'55"W, a distance of 95.73 feet to a calculated point,
for an angle point;
- 43) N44°50'55"W, a distance of 106.52 feet to a calculated point,
for an angle point;
- 44) N52°53'43"W, a distance of 50.71 feet to a calculated point,
for an angle point;
- 45) N71°16'08"W, a distance of 52.52 feet to a calculated point,
for an angle point;

- 46) N59°49'47"W, a distance of 38.08 feet to a calculated point, for an angle point;
- 47) N49°26'58"W, a distance of 86.16 feet to a calculated point, for an angle point;
- 48) N19°27'23"W, a distance of 45.20 feet to a calculated point, for an angle point;
- 49) N00°41'47"E, a distance of 41.66 feet to a calculated point, for an angle point;
- 50) N11°10'31"W, a distance of 60.93 feet to a calculated point, for an angle point;
- 51) N23°17'44"W, a distance of 71.86 feet to a calculated point, for an angle point;
- 52) N51°19'43"W, a distance of 30.29 feet to a calculated point, for an angle point;
- 53) N76°09'03"W, a distance of 31.66 feet to a calculated point, for an angle point;
- 54) S80°08'05"W, a distance of 62.24 feet to a calculated point, for an angle point;
- 55) N47°57'06"W, a distance of 55.71 feet to a calculated point, for an angle point;
- 56) N73°49'25"W, a distance of 56.12 feet to a calculated point, for an angle point;
- 57) N85°42'01"W, a distance of 31.03 feet to a calculated point, for an angle point;
- 58) S89°22'20"W, a distance of 59.65 feet to a calculated point, an angle point;
- 59) N62°45'03"W, a distance of 70.09 feet to a calculated point, for an angle point;
- 60) N73°41'43"W, a distance of 72.35 feet to a calculated point, for an angle point;
- 61) N29°34'38"W, a distance of 49.46 feet to a calculated point, for an angle point;
- 62) N00°31'40"E, a distance of 69.33 feet to a calculated point, for an angle point;
- 63) N30°48'45"W, a distance of 70.19 feet to a calculated point, for an angle point;

- 64) N05°32'47"E, a distance of 139.88 feet to a calculated point,
for an angle point;
- 65) N40°28'01"W, a distance of 59.67 feet to a calculated point,
for an angle point;
- 66) S40°32'37"W, a distance of 163.68 feet to a calculated point,
for an angle point;
- 67) N60°13'22"W, a distance of 132.37 feet to a calculated point,
for an angle point;
- 68) N89°15'01"W, a distance of 97.04 feet to a calculated point,
for an angle point;
- 69) N33°17'01"W, a distance of 87.74 feet to a calculated point,
for an angle point;
- 70) N12°20'56"W, a distance of 81.96 feet to a calculated point,
for an angle point;
- 71) N43°37'29"W, a distance of 167.95 feet to a calculated point,
for an angle point;
- 72) N09°29'37"E, a distance of 69.98 feet to a calculated point,
for an angle point;
- 73) N35°37'27"E, a distance of 70.59 feet to a calculated point,
for an angle point;
- 74) N34°52'43"W, a distance of 118.29 feet to a calculated point,
for an angle point;
- 75) N66°14'09"W, a distance of 126.25 feet to a calculated point,
for an angle point;
- 76) N13°02'32"E, a distance of 61.63 feet to a calculated point,
for an angle point;
- 77) N20°02'32"W, a distance of 71.86 feet to a calculated point,
for an angle point;
- 78) N03°06'54"E, a distance of 108.22 feet to a calculated point,
for an angle point;
- 79) N31°49'14"W, a distance of 61.52 feet to a calculated point,
for an angle point;
- 80) S81°43'25"W, a distance of 91.81 feet to a calculated point,
for an angle point;
- 81) S88°09'57"W, a distance of 198.97 feet to a calculated point,
for an angle point;

- 82) N54°58'54"W, a distance of 53.43 feet to a calculated point, for an angle point;
- 83) N32°33'32"E, a distance of 43.54 feet to a calculated point, for an angle point;
- 84) N73°46'59"E, a distance of 65.35 feet to a calculated point, for an angle point;
- 85) N22°07'14"E, a distance of 67.11 feet to a calculated point, for an angle point;
- 86) N01°47'28"E, a distance of 139.30 feet to a calculated point, for an angle point;
- 87) N44°51'12"E, a distance of 147.56 feet to a calculated point, for an angle point;
- 88) N36°10'24"W, a distance of 112.55 feet to a calculated point, for an angle point;
- 89) N41°17'44"E, a distance of 42.83 feet to a calculated point, for an angle point;
- 90) N66°44'37"W, a distance of 218.31 feet to a calculated point, for an angle point;
- 91) S22°41'37"W, a distance of 120.76 feet to a calculated point, for an angle point;
- 92) S59°17'15"W, a distance of 79.96 feet to a calculated point, for an angle point;
- 93) N45°30'19"W, a distance of 109.77 feet to a calculated point, for an angle point;
- 94) N61°10'57"W, a distance of 73.43 feet to a calculated point, for an angle point;
- 95) S86°47'01"W, a distance of 25.00 feet to a calculated point, being an angle point in the northerly line of that certain 137.772 acre tract conveyed to Jennifer Scott Riggs by Deed of Record in Document No. 2003117240 of said Official Public Records, for an angle point;

THENCE, leaving the approximate centerline of Gilleland Creek, along the northerly line of said 137.72 acre tract, being the southerly line of said 750.533 acre tract, for, a portion of the southerly line hereof, the following two (2) courses and distances:

- 1) N28°10'51"E, a distance of 206.21 feet to a 1/2 inch iron rod with cap set for an angle point;

- 2) N27°57'39"E, a distance of 698.70 feet to a 1/2 inch iron pipe found at an angle point in the northerly line of said 137.772 acre tract, being in the southerly line of said 165.984 acre tract, for an angle point;

THENCE, continuing along the northerly line of said 137.772 acre tract, being the southerly line of said 165.984 acre tract, for a portion of the southerly line hereof, the following ten (10) courses and distance:

- 1) N62°42'45"W, a distance of 1574.58 feet to a 1/2 inch iron rod with cap set for an angle point;
- 2) N62°30'14"W, a distance of 390.02 feet to a 1/2 inch iron rod with cap set for an angle point;
- 3) N64°21'34"W, a distance of 87.41 feet to a 1/2 inch iron rod with cap set for an angle point;
- 4) N62°45'03"W, a distance of 162.16 feet to 1/2 inch iron rod found for an angle point;
- 5) N62°27'50"W, a distance of 291.49 feet to 1/2 inch iron rod found for an angle point;
- 6) N62°43'58"W, a distance of 298.62 feet to 1/2 inch iron rod found for an angle point;
- 7) N62°39'09"W, a distance of 353.97 feet to 1/2 inch iron rod found for an angle point;
- 8) N62°26'41"W, a distance of 124.59 feet to a 1/2 inch iron rod with cap set for an angle point;
- 9) N62°37'20"W, a distance of 145.41 feet to 1/2 inch iron rod found for an angle point;
- 10) N62°42'19"W, a distance of 414.40 feet to a 5/8 inch iron rod found at the southwesterly corner of said 165.984 acre tract, for the southwesterly corner hereof;

THENCE, N28°01'45"E, in part continuing along the northerly line of said 137.772 acre tract, and in part along the easterly line of that certain 51.937 acre tract conveyed to Helen R. Dressen by Deed of record in Volume 10810, Page 40, of said Real Property Records, being the westerly line of said 165.984 acre tract, for a portion of the westerly line hereof, a distance of 1765.59 feet to a 1/2 inch iron rod with cap set at the northwesterly corner of said 165.984 acre tract, being the southwesterly corner of said 750.533 acre tract, for an angle point;

THENCE, N28°16'57"E, in part continuing along the easterly line of said 51.937 acre tract, and in part along the easterly line of that certain 52.119 acre tract conveyed to James A. Nelson, Jr., by Deed of record in Volume 10810, Page 40, of said Real Property Records, a distance of 1561.57 feet to a 1/2 inch iron rod with cap set at the northeasterly corner of said 52.119 acre tract, being an angle point in the southerly line of said 548.08 acre tract, for an angle point;

THENCE, N62°20'40"W, leaving the westerly line of said 750.533 acre tract, along the northerly line of said 52.119 acre tract, being the southerly line of said 548.08 acre tract, for a portion of the westerly line hereof, a distance of 1454.92 feet to a 1/2 inch iron rod with cap set at the southwesterly corner of said 548.08 acre tract, being the southeasterly corner of that certain 3.85 acre tract of land conveyed to the City of Austin, by Deed of record in Volume 3296, Page 247 of said Deed Records, for an angle point;

THENCE, along the easterly line of said 3.85 acre tract and the easterly and northerly lines of that certain tract conveyed to Anne B. Schryver, Et. Al., by Deed of record in Volume 12870, Page 1684, of said Real Property Records, tract, being the westerly line of said 548.08 acre tract, for a portion of the westerly line hereof, the following three (3) courses and distances:

- 1) N28°21'05"E, a distance of 1605.54 feet to a 1/2 inch iron rod with cap set for an angle point;
- 2) N25°42'21"E, a distance of 245.50 feet to a 1/2 inch iron rod with cap set at the northeasterly corner of said Schryver tract, for an angle point;
- 3) N26°24'30"W, a distance of 1521.86 feet to a 1/2 inch iron rod with cap set at the northwesterly corner of said Schryver tract, being in said easterly right-of-way line of F.M. Highway No. 973, for an angle point;

THENCE, along said easterly right-of-way line of said F.M. Highway No. 973, being the westerly line of said 548.08 acre tract and said 164.73 acre tract, for a portion of the westerly line hereof, the following six (6) courses and distances:

- 1) N28°51'02"E, a distance of 792.97 feet to a 1/2 inch iron rod with cap set for an angle point;
- 2) N23°08'50"E, a distance of 200.99 feet to a concrete monument found at an angle point;
- 3) N29°17'58"E, a distance of 105.40 feet to a concrete monument found at the northwesterly corner of said 548.08 acre tract, being the southwesterly corner of said 164.73 acre tract, for an angle point;

- 4) N27°10'09"E, a distance of 23.58 feet to a TxDOT Type I concrete monument found at the point of curvature of a curve to the left;
- 5) Along said curve, having a radius of 2915.00 feet, a central angle of 22°15'13", an arc length of 1132.18 feet, and a chord of which bears N17°43'23"E, a distance of 1125.08 feet to a TxDOT Type I concrete monument found at the point of tangency of said curve;
- 6) N06°38'03" E, a distance of 311.43 feet to the **POINT OF BEGINNING** containing an area of 1819.188 acres (79,243,814 square feet) of land, more or less, within these metes and bounds.

TRACT II - 247.096 ACRES

BEGINNING, at a 1/2 inch iron rod with cap found in the easterly right-of-way line of Taylor Lane (80' R.O.W.), at the southwesterly corner of that certain 27.92 acre tract conveyed to Walter S. Chamberlin by Deed of Record in Volume 11795, Page 32 of the Real Property Records of Travis County, Texas, for the northwesterly corner of said 247.156 acre tract and hereof;

THENCE, leaving said easterly right-of-way line of Taylor Lane, along the southerly line of said 27.92 acre tract and that certain 40.90 acre tract conveyed to Travis County, by Deed of record in Document No. 2002153674 of said Official Public Records, for the northerly line of said 247.156 acre tract and hereof, the following three (3) courses and distances:

- 1) S62°19'58"E, a distance of 127.06 feet to a 1/2 inch iron rod found for an angle point;
- 2) S62°40'50"E, a distance of 875.80 feet to a 1/2 inch iron rod with cap set for an angle point;
- 3) S62°45'17"E, a distance of 2396.70 feet to a 1/2 inch iron rod with cap set at the northeasterly corner of said 247.156 acre tract, being the northwesterly corner of that certain 50.024 acre tract conveyed to Terry Masters, by Deed of record in Volume 12137, Page 79, of said Real Property Records, for the northeasterly corner hereof;

THENCE, leaving the southerly line of said 40.90 acre tract, along the westerly and southerly lines of said 52.024 acre tract, being the easterly line of said 247.156 acre tract, for a portion of the easterly line hereof, the following six (6) courses and distances:

- 1) S27°38'37"W, a distance of 1656.72 feet to a 1/2 inch iron rod with cap set for an angle point;

- 2) S26°46'24"W, a distance of 278.40 feet to a 1/2 inch iron rod with cap set for an angle point;
- 3) S26°25'17"W, a distance of 310.86 feet to a 1/2 inch iron rod with cap set for an angle point;
- 4) S24°58'15"W, a distance of 99.44 feet to a wood fence post found for an angle point;
- 5) S62°27'04"E, a distance of 782.06 feet to a 1/2 inch iron rod with cap set for an angle point;
- 6) S62°54'09"E, a distance of 319.90 feet to a 1/2 inch iron rod with cap set in the westerly line of that certain 30.00 acre tract conveyed to The Lundell 1991 Trust, by Deed of record in Volume 11422, Page 436 of said Real Property Records, for an angle point;

THENCE, along the westerly line of said 30.00 acre tract, being the easterly line of said 247.156 acre tract, for a portion of the easterly line hereof, the following four (4) courses and distances:

- 1) S25°09'46"W, a distance of 82.68 feet to a 1/2 inch iron rod with cap set for an angle point;
- 2) S29°40'59"W, a distance of 328.78 feet to a 1/2 inch iron rod with cap set for an angle point;
- 3) S28°45'06"W, a distance of 150.93 feet to a 1/2 inch iron rod with cap set for an angle point;
- 4) S26°44'38"W, a distance of 85.20 feet to a wood fence post found at the northeasterly corner of that certain 130.638 acre tract conveyed to Fannie Ruth Salyer Life Estate, by Deed of record in Document No. 1999019515 of said Official Public Records, for the southeasterly corner of said 247.156 acre tract and hereof;

THENCE, N62°02'23"W, leaving the westerly line of said 30.00 acre tract, along the northerly line of said 130.638 acre tract, for the southerly line of said 247.156 acre tract and hereof, a distance of 4487.32 feet a 1/2 inch iron rod found in said easterly right-of-way line of Taylor Road, at the northwesterly corner of said 130.638 acre tract, for the southwesterly corner of said 247.156 acre tract and hereof;

THENCE, along said easterly right-of-way line of Taylor Lane, being the westerly line of said 247.156 acre tract, for the westerly line hereof, the following four (4) courses and distances:


- 1) N27°14'01"E, a distance of 916.35 feet to a 1/2 inch iron rod found at the beginning of a non-tangent curve to the left;

FN 10-101(KWA)
MAY 17, 2010
PAGE 15 OF 15

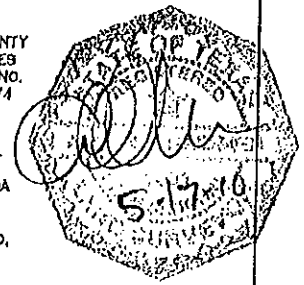
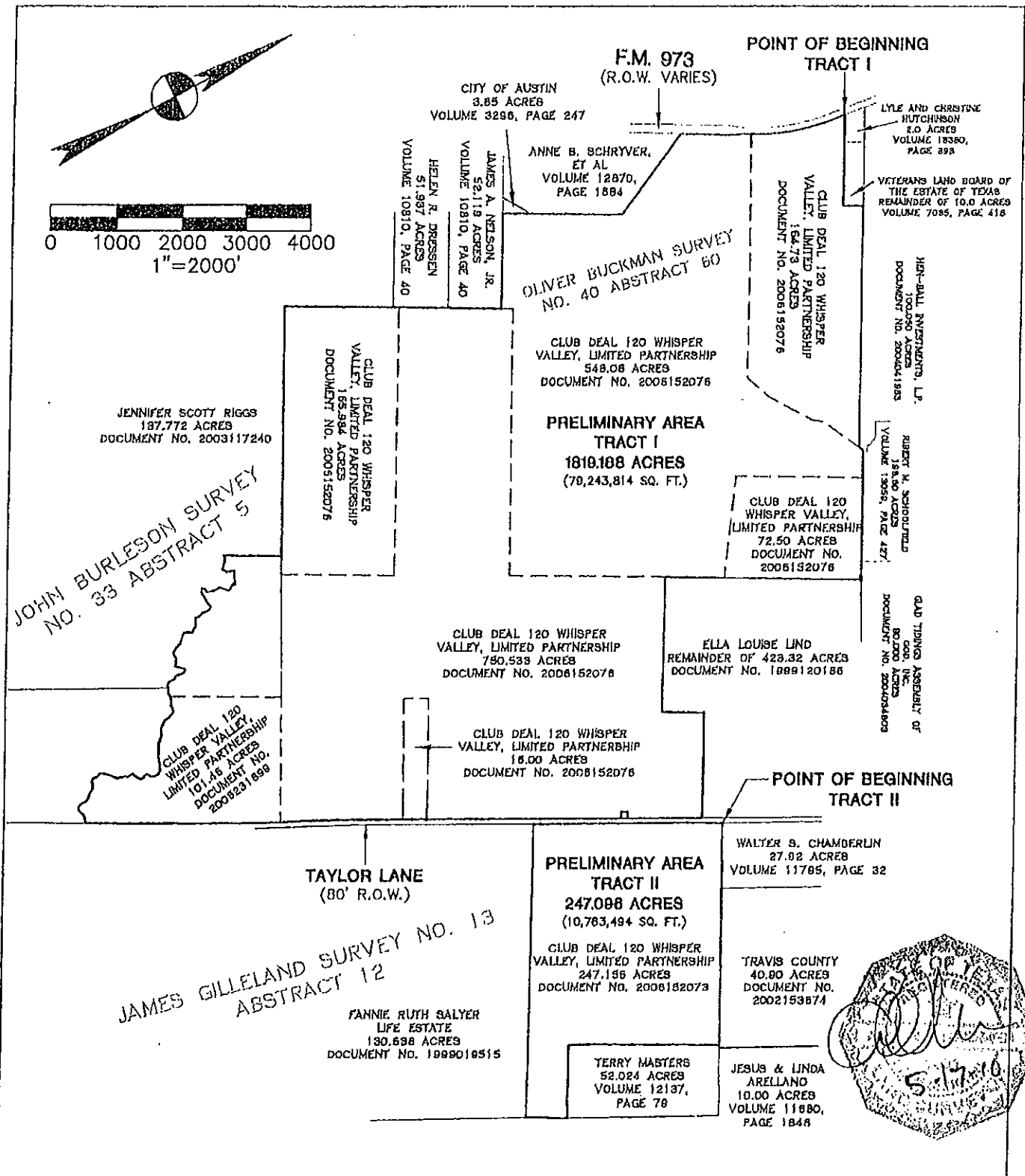
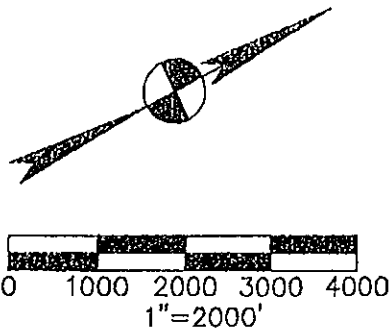
- 2) Along said curve, having a radius of 93792.13 feet, a central angle of $00^{\circ}33'01''$, an arc length of 900.84 feet, and a chord of which bears $N26^{\circ}58'54''E$, a distance of 900.83 feet to a 1/2 inch iron rod found at the end of said curve;
- 3) $N26^{\circ}46'57''E$, a distance of 454.27 feet to a 1/2 inch iron rod with cap found at the beginning of a non-tangent curve to the right;
- 4) Along said curve, having a radius of 14621.15 feet, a central angle of $02^{\circ}37'39''$, an arc length of 670.51 feet, and a chord of which bears $N27^{\circ}58'11''E$, a distance of 670.45 feet to the **POINT OF BEGINNING** containing an area of 247.096 acres (10,763,494 square feet) of land, more or less, within these metes and bounds.

I, ABRAM C. DASHNER, A REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY STATE THAT THIS DESCRIPTION IS BASED UPON A SURVEY MADE ON THE GROUND BY BURY+PARTNERS, INC. UNDER MY DIRECTION AND SUPERVISION. A SURVEY SKETCH PLAT WAS PREPARED TO ACCOMPANY THIS DESCRIPTION.

BURY & PARTNERS, INC.
ENGINEERS-SURVEYORS
221 WEST SIXTH STREET, SUITE 600
AUSTIN, TEXAS 78701


5-17-10
ABRAM C. DASHNER, R.P.L.S.
NO. 5901
STATE OF TEXAS



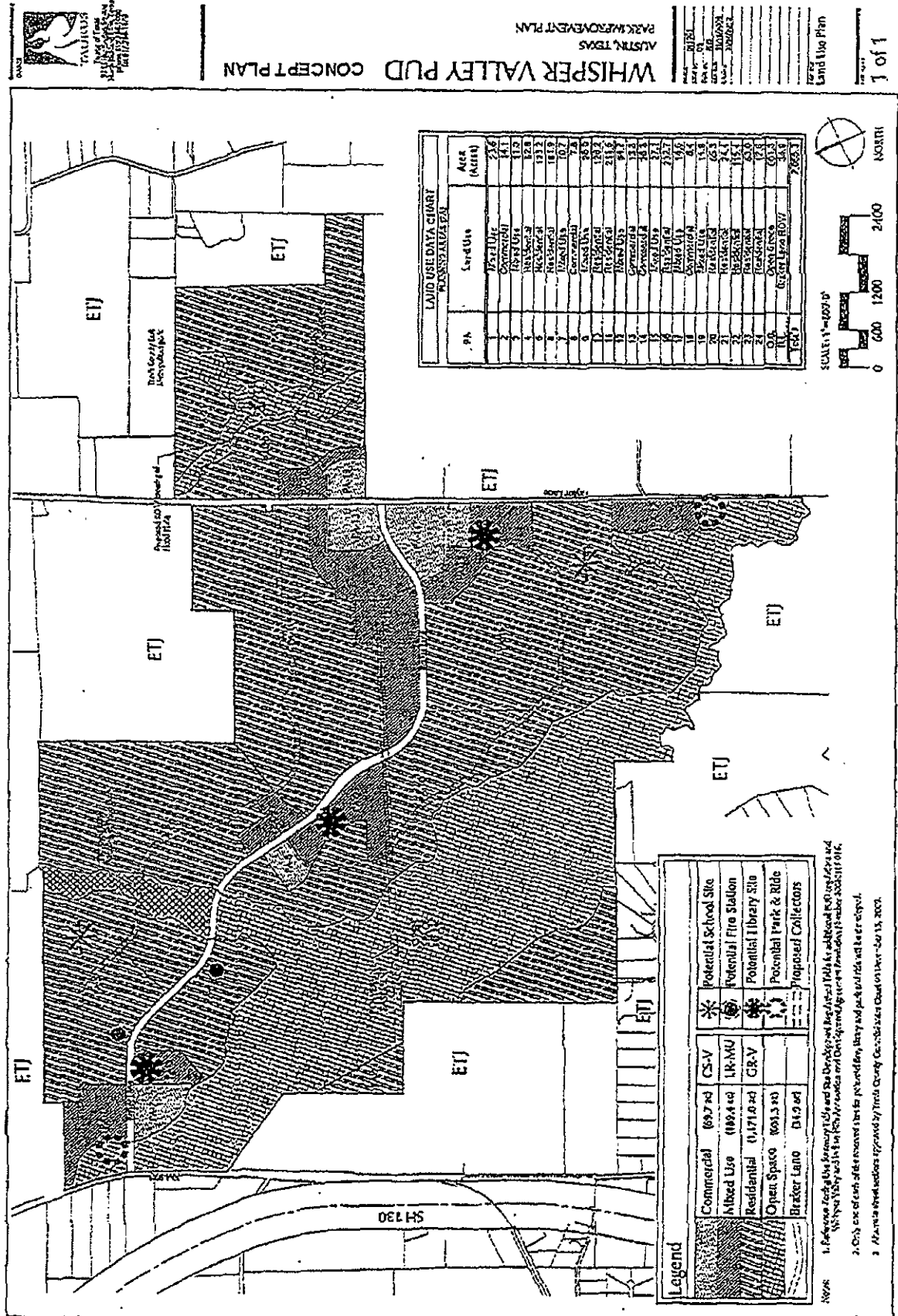


Bury+Partners
ENGINEERING SOLUTIONS
221 West Sixth Street, Suite 600
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SKETCH TO ACCOMPANY DESCRIPTION
OF 2066.284 ACRES OF LAND OUT OF THE OLIVER BUCKMAN SURVEY NO. 40, ABSTRACT 60, THE JOHN BURLESON SURVEY NO. 33, ABSTRACT 5, AND THE JAMES GILLELAND SURVEY NO. 13, ABSTRACT 12, SITUATED IN TRAVIS COUNTY, TEXAS.

WHISPER VALLEY

DATE: 05/17/10 FILE: H:\1758\02\175802EX12.DWG FN No.: 10-101(KWA) DRAWN BY: KWA PROJ. No: 1758-02



1. Refer to the City of Austin's Comprehensive Land Use and Development Ordinance (Chapter 21C, Subchapter 21C.01) for the definition of the various land use designations and the various development standards for each land use designation.

2. Only one of each of the various land use designations may be used on the same site.

3. All other land use designations are shown for informational purposes only.

EXHIBIT C

Grow Green Native and Adapted Landscape Plants

Trees

Ash, Texas <i>Fraxinus texensis</i>	Oak, Escarpment Live <i>Quercus fusiformis</i>
Arizona Cypress <i>Cupressus arizonica</i>	Oak, Lacey <i>Quercus glaucoides</i>
Big Tooth Maple <i>Acer grandidentatum</i>	Oak, Monterey (Mexican White) <i>Quercus polymorpha</i>
Cypress, Bald <i>Taxodium distichum</i>	Oak, Shumard <i>Quercus shumardii</i>
Cypress, Montezuma <i>Taxodium mucronatum</i>	Oak, Texas Red <i>Quercus texana</i> (<i>Quercus buckleyi</i>)
Elm, Cedar <i>Ulmus crassifolia</i>	Pecan <i>Carya illinoensis</i>
Elm, Lacebark <i>Ulmus parvifolia</i>	Soapberry <i>Sapindus drummondii</i>
Honey Mesquite <i>Prosopis glandulosa</i>	
Oak, Bur <i>Quercus macrocarpa</i>	
Oak, Chinquapin <i>Quercus muhlenbergii</i>	
Oak, Southern Live <i>Quercus virginiana</i>	

Small Trees/Large Shrubs

Anacacho Orchid Tree <i>Bauhinia congesta</i>	Persimmon, Texas <i>Diospyros texana</i>
Buckeye, Mexican <i>Ungnadia speciosa</i>	Pistachio, Texas <i>Pistacia texana</i>
Buckeye, Red <i>Aesculus pavia</i>	Plum, Mexican <i>Prunus mexicana</i>
Carolina Buckthorn <i>Rhamnus caroliniana</i>	Pomegranate <i>Punica granatum</i>
Cherry Laurel <i>Prunus caroliniana</i>	Redbud, Mexican <i>Cercis canadensis</i> 'mexicana'
Crape Myrtle <i>Lagerstroemia indica</i>	Redbud, Texas <i>Cercis canadensis</i> var. 'texensis'
Desert Willow <i>Chilopsis linearis</i>	Retama Jerusalem Thorn <i>Parkinsonia aculeata</i>
Dogwood, Roughleaf <i>Cornus drummondii</i>	Senna, Flowering <i>Cassia corymbosa</i>
Escarpment Black Cherry <i>Prunus serotina</i> var. <i>eximia</i>	Smoke Tree, American <i>Cotinus obovatus</i>
Eve's Necklace <i>Sophora affinis</i>	Sumac, Flameleaf <i>Rhus lanceolata</i>
Goldenball Leadtree <i>Leucaena retusa</i>	Viburnum, Rusty Blackhaw <i>Viburnum rufidulum</i>
Holly, Possumhaw <i>Ilex decidua</i>	Viburnum, Sandankwa <i>Viburnum suspensum</i>
Holly, Yaupon <i>Ilex vomitoria</i>	
Mountain Laurel, Texas <i>Sophora secundiflora</i>	

Shrubs

- Abelia, Glossy *Abelia grandiflora*
 Agarita *Berberis trifoliata*
 Agave (Century Plant) *Agave sp.*
 American Beautyberry *Callicarpa americana*
 Artemisia *Artemisia 'Powis Castle'*
 Barbados Cherry *Malpighia glabra*
 Barberry, Japanese *Berberis thunbergii*
'Atropurpurea'
 Basket Grass (Sacahuista) *Nolina texana*
 Black Dalea *Dalea frutescens*
 Bush Germander *Teucrium fruticans*
 Butterfly Bush *Buddleia davidii*
 Butterfly Bush, Woolly *Buddleia marrubifolia*
 Coralberry *Symphoricarpos orbiculatus*
 Cotoneaster *Cotoneaster sp.*
 Eleagnus *Eleagnus pungens*
 Esperanza/Yellow Bells *Tecoma stans*
 Flame Acanthus *Anisacanthus quadrifidus var. wrightii*
 Fragrant Mimosa *Mimosa borealis*
 Holly, Burford *Ilex cornuta 'Burfordii'*
 Holly, Dwarf Chinese *Ilex cornuta 'Rotunda nana'*
 Holly, Dwarf Yaupon *Ilex vomitoria 'Nana'*
 Jasmine, Primrose *Jasminum mesnyi*
 Kidneywood *Eysenhardtia texana*
 Lantana, Native *Lantana horrida*
 Mistflower, Blue (Blue Boneset) *Eupatorium coelestinum*
 Mistflower, White (Shrubby White Boneset) *Ageratina havanense*
 Mock Orange *Philadelphus coronarius*
 Nandina *Nandina domestica 'Compacta nana' 'Gulf Stream'*
 Oleander *Nerium oleander*
 Palmetto *Sabal minor*
 Prickly Pear *Opuntia engelmannii var. lindheimeri*
 Rose, Belinda's Dream *Rosa 'Belinda's Dream'*
 Rose, Lamarne *Rosa 'Lamarne'*
 Rose, Livin' Easy *Rosa 'Livin' Easy'*
 Rose, Marie Pavie *Rosa 'Marie Pavie'*
 Rose, Martha Gonzales *Rosa 'Martha Gonzales'*
 Rose, Mutabilis *Rosa 'Mutabilis'*
 Rose, Nearly Wild *Rosa 'Nearly Wild'*
 Rose, Old Blush *Rosa 'Old Blush'*
 Rose, Perle d'or *Rosa 'Perle d'or'*
 Rock Rose *Pavonia lasiopetala*
 Rosemary *Rosmarinus officinalis*
 Sage, Mountain *Salvia reglia*
 Sage, Texas (Cenizo) *Leucophyllum frutescens*
 Senna, Lindheimer *Cassia lindheimeriana*
 Southern Wax Myrtle *Myrica cerifera*
 Sumac, Evergreen *Rhus virens*
 Sumac, Fragrant (Aromatic) *Rhus aromatica*
 Texas Sotol *Dasylirion texanum*
 Turk's Cap *Malvaviscus arboreus*
 Yucca, Paleleaf *Yucca pallida*
 Yucca, Red *Hesperaloe parviflora*
 Yucca, softleaf *Yucca recurvifolia*
 Yucca, Twistleaf *Yucca rupicola*

Perennials

Black-eyed Susan <i>Rudbeckia hirta</i>	Lantana, Trailing <i>Lantana montevidensis</i>
Bulbine <i>B. frutescens</i> or <i>caulescens</i>	Marigold, Mexican Mint <i>Tagetes lucida</i>
Bush Morning Glory <i>Ipomoea fistulosa</i>	Obedient Plant, Fall <i>Physostegia virginiana</i>
Butterfly Weed <i>Asclepias tuberosa</i>	Oregano, Mexican <i>Poliomintha longiflora</i>
Butterfly Weed 'Mexican' <i>Asclepias curassivica</i>	Penstemon <i>Penstemon</i> sp.
Cast Iron Plant <i>Aspidistra elatior</i>	Phlox, Fragrant <i>Phlox pilosa</i>
Chile Pequin <i>Capsicum annuum</i>	Pink Skullcap <i>Scutellaria suffrutescens</i>
Cigar Plant <i>Cuphea micropetala</i>	Plumbago <i>Plumbago auriculata</i>
Columbine, Red <i>Aquilegia canadensis</i>	Poinciana, Red Bird of Paradise, Pride of Barbados
Columbine, Yellow <i>Aquilegia chrysantha</i> 'Texas Gold'	<i>Caesalpinia pulcherrima</i>
Coreopsis <i>Coreopsis lanceolata</i>	Primrose, Missouri <i>Oenothera macrocarpa</i>
Daisy, Blackfoot <i>Melampodium leucanthum</i>	Purple Coneflower <i>Echinacea purpurea</i>
Daisy, Copper Canyon <i>Tagetes lemmonii</i>	Ruellia <i>Ruellia brittoniana</i>
Damiantia <i>Crysactina mexicana</i>	Sage, Cedar <i>Salvia roemeriana</i>
Fall Aster <i>Aster oblongifolius</i>	Sage, Jerusalem <i>Phlomis fruticosa</i>
Fern, River <i>Thelypteris kunthii</i>	Sage, Majestic <i>Salvia guaranitica</i>
Firebush <i>Hamelia patens</i>	Sage, Mealy Blue <i>Salvia farinacea</i>
Gaura <i>Gaura lindheimeri</i>	Sage, Mexican Bush <i>Salvia leucantha</i>
Gayfeather <i>Liatris mucronata</i>	Sage, Penstemon, Big Red Sage <i>Salvia penstemonoides</i>
Gregg Dalea <i>Dalea greggii</i>	Sage, Russian <i>Perovskia atricatifolia</i>
Hibiscus, Perennial <i>Hibiscus moscheutos</i> , <i>Hibiscus coccineus</i>	Sage, Scarlet or 'Tropical' <i>Salvia coccinea</i>
Honeysuckle, Mexican <i>Justicia spicigera</i>	Salvia, Gregg (Cherry Sage) <i>Salvia greggii</i>
Hymenoxys (Four Nerve Daisy) <i>Tetaneuris scaposa</i>	Shrimp Plant <i>Justicia brandegeana</i>
Indigo Spires <i>Salvia 'Indigo Spires'</i>	Texas Betony <i>Stachys coccinea</i>
Iris, Bearded <i>Iris albicans</i>	Verbena, Prairie <i>Verbena bipinnatifida</i>
Iris, Butterfly/Bicolor (African) <i>Dietes sp.</i>	Yarrow <i>Achillea millefolium</i>
Lamb's Ear <i>Stachys byzantina</i>	Zexmenia <i>Wedelia texana</i>
Lantana <i>Lantana x hybrida</i> (many varieties)	

Vines

Asian Jasmine <i>Trachelospermum asiaticum</i>	Honeysuckle, Coral <i>Lonicera sempervirens</i>
Carolina Jessamine <i>Gelsemium sempervirens</i>	Lady Banksia Rose <i>Rosa banksiae</i>
Coral Vine <i>Antigonon leptopus</i>	Passion Vine <i>Passiflora incarnata</i>
Crossvine <i>Bignonia capreolata</i>	Trumpet Vine <i>Campsis radicans</i>
Fig Vine <i>Ficus pumila</i>	Virginia Creeper <i>Parthenocissus quinquefolia</i>

Ornamental Grasses

Bluestem, Big <i>Andropogon gerardii</i>	Mexican Feathergrass (Wiregrass) <i>Stipa tenuissima</i>
Bluestem, Bushy <i>Andropogon glomeratus</i>	Muhly, Bamboo <i>Muhlenbergia dumosa</i>
Bluestem, Little <i>Schizachyrium scoparium</i>	Muhly, Big <i>Muhlenbergia lindheimeri</i>
Fountain Grass, Dwarf <i>Pennisetum alopecuroides</i>	Muhly, Deer <i>Muhlenbergia rigens</i>
Indian Grass <i>Sorghastrum nutans</i>	Muhly, Gulf <i>Muhlenbergia capillaris</i>
Inland Sea Oats <i>Chasmanthium latifolium</i>	Muhly, Seep <i>Muhlenbergia reverchonii</i>
	Sideoats Grama <i>Bouteloua curtipendula</i>
	Wild Rye <i>Elymus canadensis</i>

Groundcover

Aztec Grass <i>Ophiopogon japonicus</i>	Purple Heart <i>Secreasea pallida</i>
Frogfruit <i>Phyla incisa</i>	Santolina (Lavender Cotton) <i>Santolina chamaecyparissus</i>
Horseherb <i>Calyptocarpus vialis</i>	Sedge, Berkeley <i>Carex tumulicola</i>
Leadwort Plumbago <i>Ceratostigma plumbaginoides</i>	Sedge, Meadow <i>Carex perdentata</i>
Liriope <i>Liriope muscari</i>	Sedge, Texas <i>Carex texensis</i>
Monkey Grass (Mondo Grass) <i>Ophiopogon japonicus</i>	Sedum (Stonedrop) <i>Sedum nuttallianum</i>
Oregano <i>Origanum vulgare</i>	Silver Ponyfoot <i>Dichondra argentea</i>
Periwinkle, Littleleaf <i>Vinca minor</i>	Wooly Stemodia <i>Stemodia lanata</i> (<i>Stemodia tomentosa</i>)
Pigeonberry <i>Rivina humilis</i>	

Turf Grasses

Bermuda 'Tif 419', 'Sahara', 'Baby', 'Common'
 Buffalo '609', 'Stampede', 'Prairie'
 St. Augustine 'Baby', 'Common', 'Raleigh', 'Delmar'
 Zoysia, Fine Leaf 'Matrella', 'Emerald', 'Zorro'
 Zoysia, Coarse Leaf 'Japonica', 'Jamur', 'El Toro', 'Palis'

Invasive Species/Problem Plants

PLANTS TO AVOID

INVASIVES

(Plants that are non-native to the Central Texas ecosystem and tend to out-compete native species)

Do Not Plant

(Travel by seeds, berries, and spores so can be transported long distances. They have already invaded preserves and greenbelts):

- Arizona Ash
- Chinaberry
- Chinese Pistache
- Chinese Tallow
- Chinese Privet
- Elephant Ear
- Holly Fern
- Japanese Honeysuckle
- Ligustrum, Wax Leaf
- Mimosa
- Mulberry, Paper
- Nandina (large, berrying varieties)
- Photinia, Chinese
- Pyracantha
- Tamarisk
- Tree of Heaven

PROBLEM TREES AND SHRUBS

(Typically fast-growing, highly adaptable, but often have weak wood and are short-lived. Most are susceptible to insect and disease problems.)

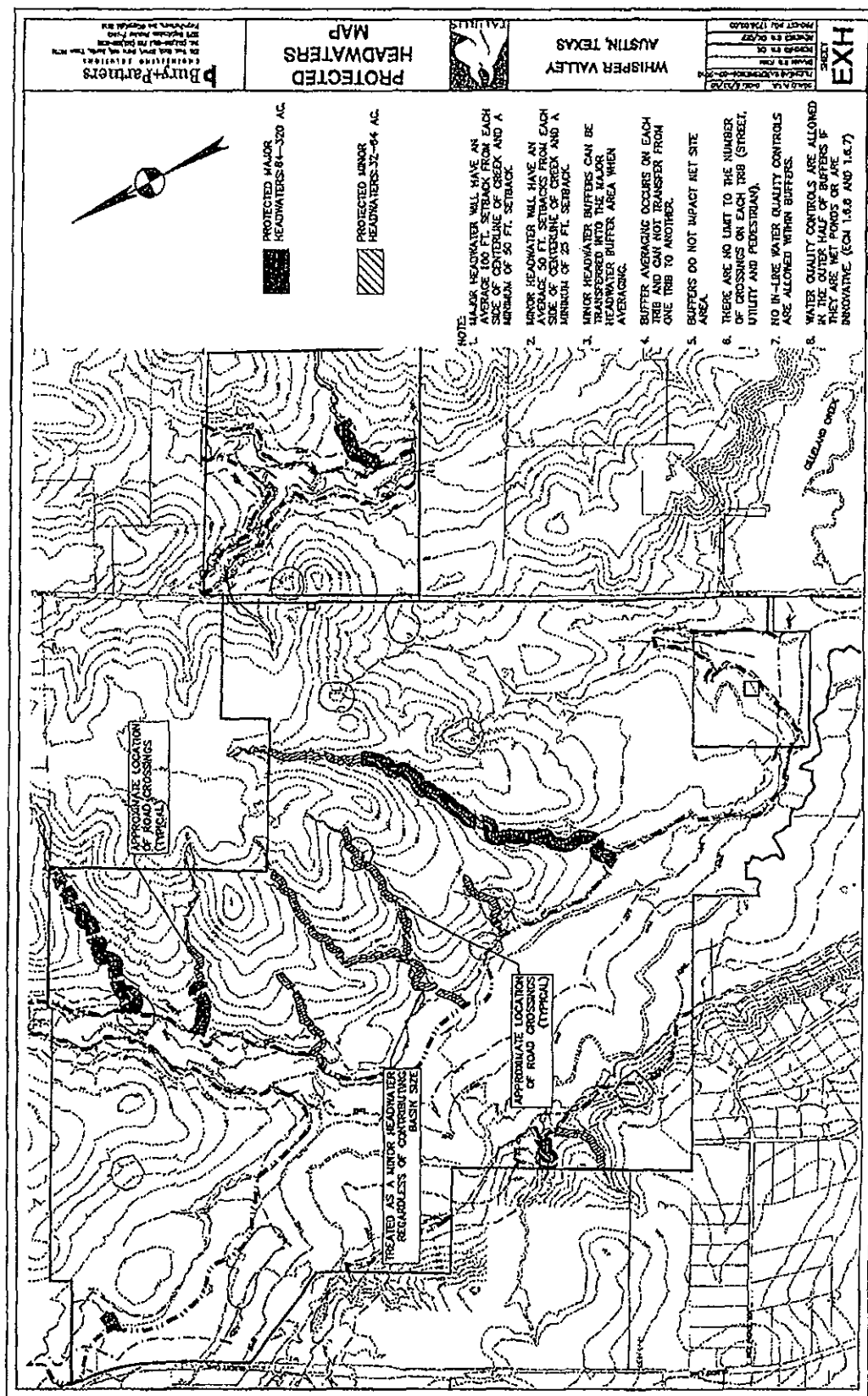
- Arizona Ash
- Azalea (not adapted to Austin soils)
- Boxelder
- Camellia
- Chinaberry
- Chinese Privet
- Chinese Tallow
- Cottonwood
- Ligustrum
- Lombardy Poplar
- Mimosa
- Mulberry, Paper
- Photinia, Chinese
- Siberian Elm
- Silver Maple
- Sweetgum
- Sycamore
- Tree of Heaven

Do Not Plant Near Parks/Preserves/Greenbelts

(travel by runners, rhizomes, and stems so only invade neighboring areas):

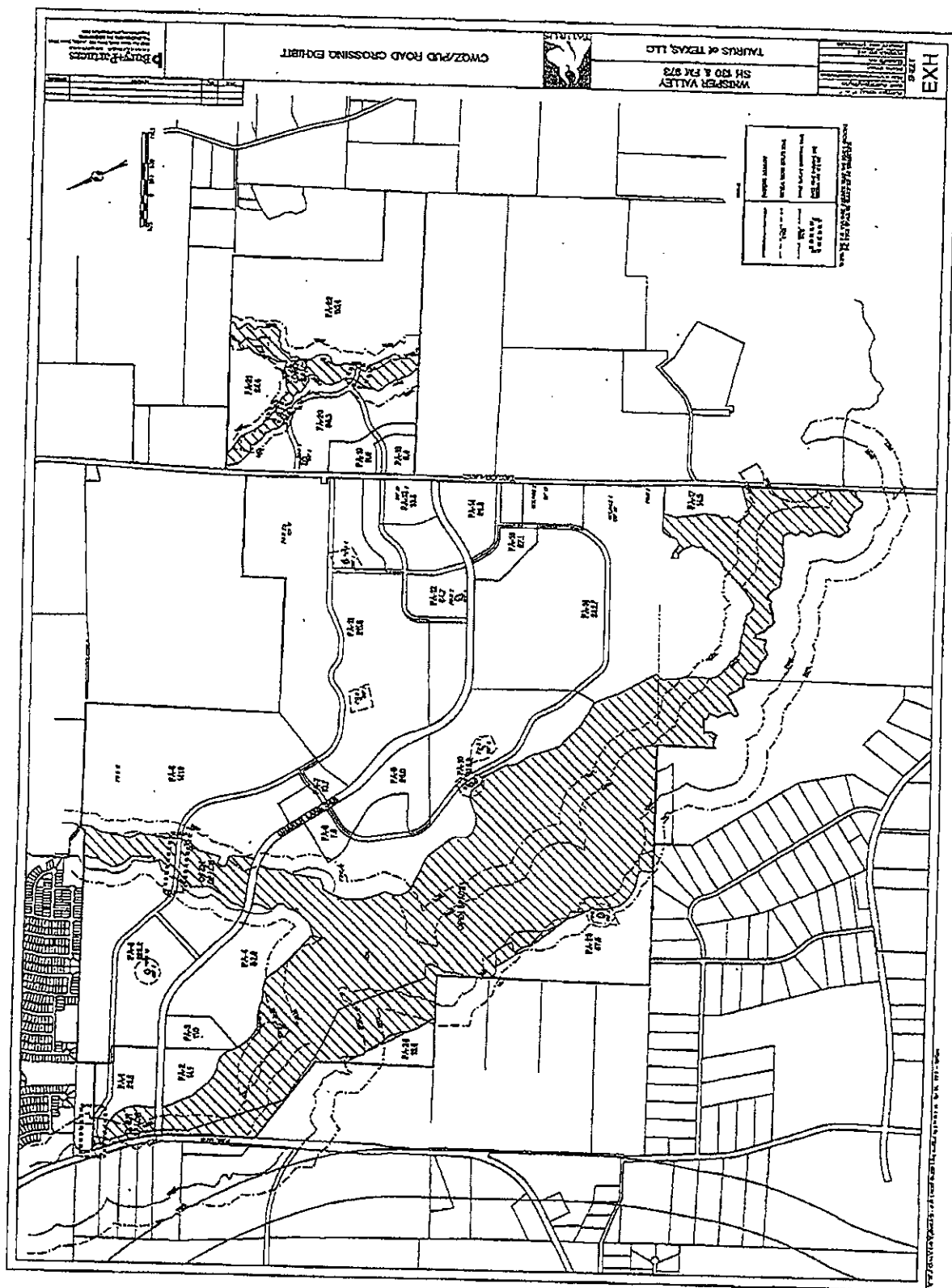
- Bamboo
- English Ivy
- Vinca (Periwinkle)

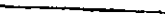
"Exhibit D"

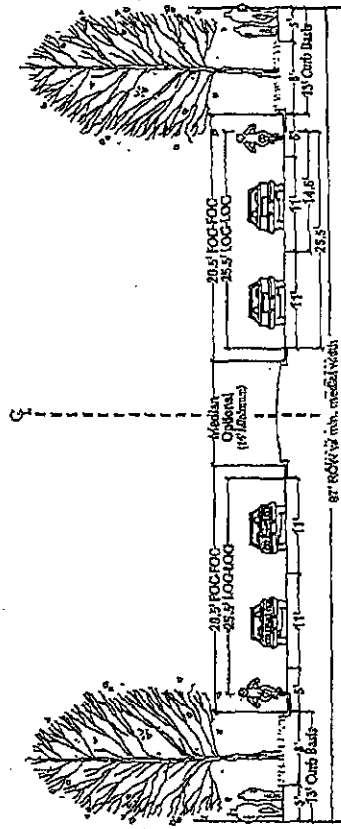


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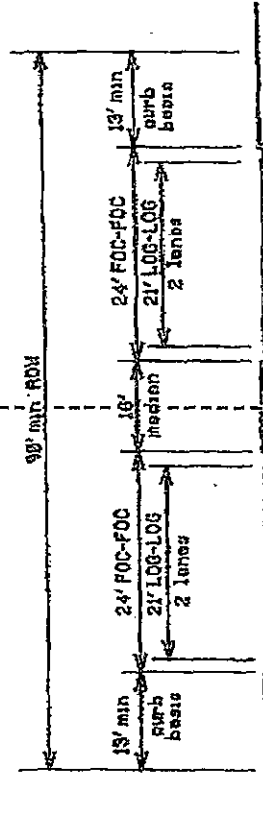
“Exhibit E”



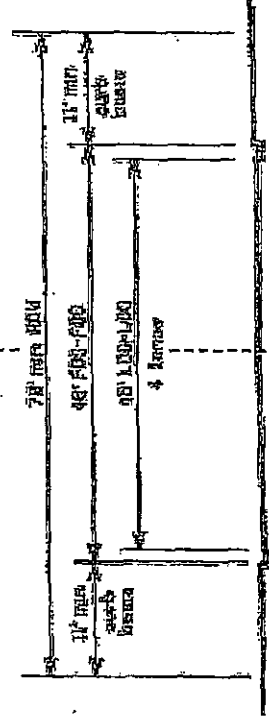
Whisper Valley PUD Austin, Texas	Street Section Comparison	1. Arterial	Notes:	Submittal Date: 02/12/2009 09/16/2009 12/07/08	
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② Primary Collector - 4 Lane
Whisper Valley PUD Plan




Primary Collector 4 Lanes with Median
City of Austin Department of Public Works and Transportation
Figure 1-33 Primary Collector 4-Lane Divided



Primary Collector 4 Lanes without Median
City of Austin Department of Public Works and Transportation
Figure 1-31 Primary Collector 4-Lanes

NOTES:

- Without Median
FOC-FOC = 54'
LOG-LOG = 51'
- Owner may choose to use either a WYP Street Standard or a TCM City Street Standard
- Landscaping within the curb basis will be in accordance with minimum City landscaping requirements
- Trees will be planted in the planting zone per Urban Roadway Standards of the Commercial Design Standards.

Whisper Valley PUD	Street Section Comparison
Austin, Texas	
2. Primary Collector-4 Lane	
Notes:	
Submittal Date:	
02/12/2009	
09/16/2009	
10/30/09	
03/26/10	
	

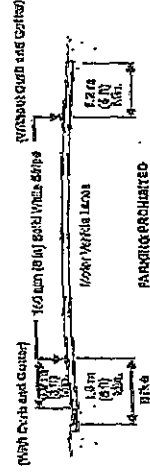
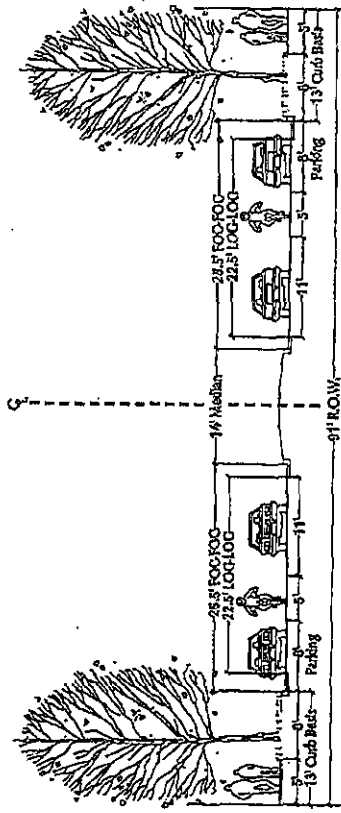
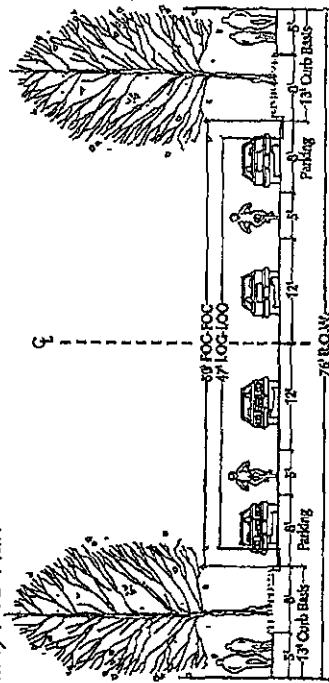


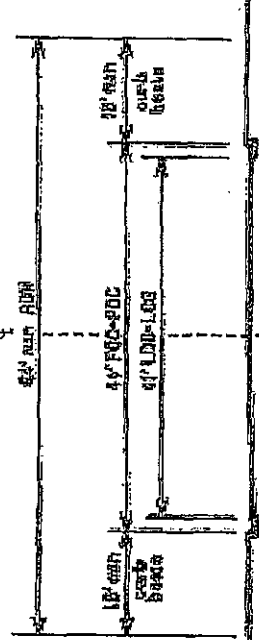
Figure 6 (3) Typical Bike Lane Cross Sections
from AASHTO Guide for the Development of Bicycle Facilities, 1999




3a) Neighborhood Collector - 2 Lane with median
Whisper Valley PUD Plan



3b) Collector - 2 Lane without median
Whisper Valley PUD Plan



Neighborhood Collector
City of Austin Department of Public Works and Transportation
Figure 1-28 Neighborhood Collector

Whisper Valley PUD	
Austin, Texas	
Street Section Comparison	
3. Neighborhood Collector - 2 Lane	
Notes:	
Submittal Date:	02/12/2009
	09/16/2009
	03/26/10
	

- NOTES:**
- 14' median allows for a 12' left turn lane and a tapered down 2' median to maintain lane separation
 - Lanes are one (1) foot narrower when median is provided. The median provides lane separation allowing for narrower lane.
 - Owner may choose to use either a WVP Street Standard or a TCM City Street Standard
 - Landscaping within the curb basis will be in accordance with minimum City landscaping requirements
 - Trees will be planted in the planting zone per Urban Roadway Standards of the Commercial Design Standards.

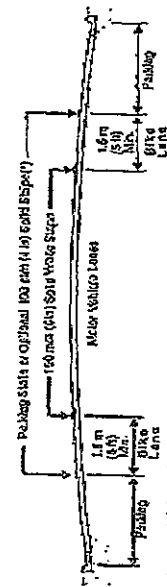
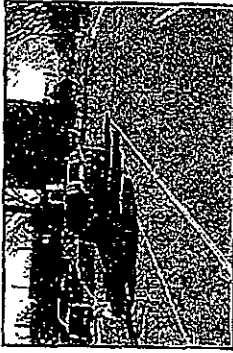
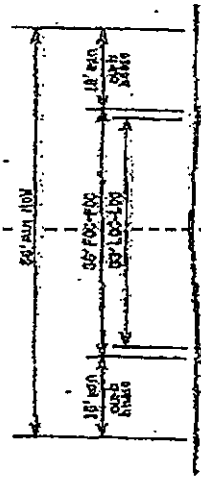
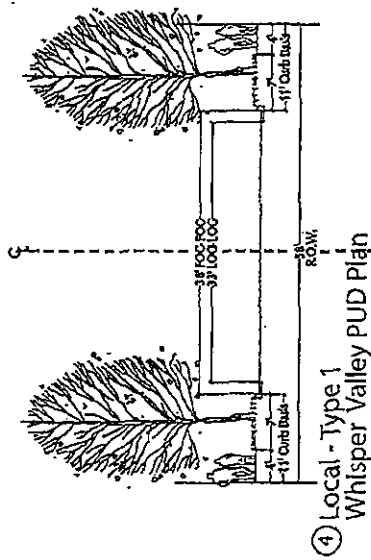


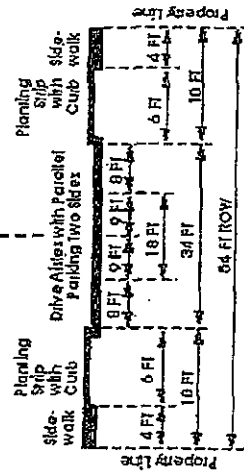
Figure 6 (1) Typical Bike Lane Cross Sections
from AASHTO Guide for the Development of Bicycle Facilities, 1999



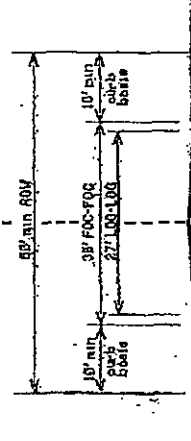
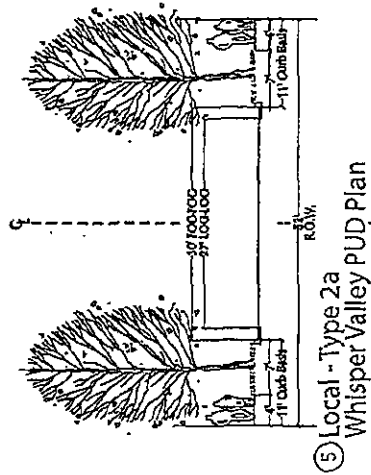
Example of Typical Bike Lane Cross Section
from AASHTO Guide for the Development of
Bicycle Facilities, 1999



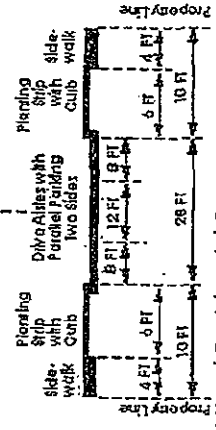
Local (SF 3-6) Figure 1-23
City of Austin Transportation and Public Services
Department
Transportation Criteria Manual, Sept. 2003
Supplement



Mixed Residential Avenue
City of Austin
TND Street Classifications and
Streetscape Standards



Local (SF 1 & 2) Figure 1-22
City of Austin Transportation and Public Services Department
Transportation Criteria Manual, Sept. 2003 Supplement



Mixed Residential Street
City of Austin
TND Street Classifications and Streetscape Standards

Whisper Valley PUD

Austin, Texas

Street Section Comparison

4. Local - Type 1
5. Local - Type 2a

Notes:

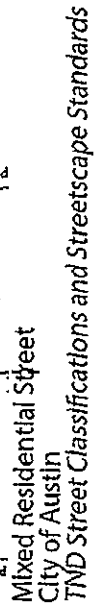
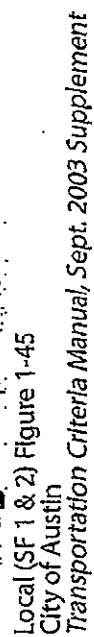
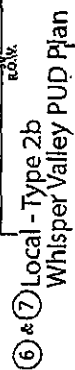
- NOTES:
- Owner may choose to use either a WVP Street Standard or a TCM City Street Standard
 - Landscaping within the curb basis will be in accordance with minimum City landscaping requirements


Submittal Date:

02/12/2009

09/16/2009

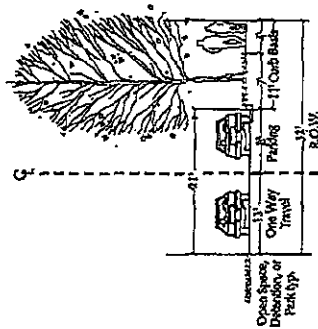




Whisper Valley PUD Austin, Texas	Street Section Comparison 6. Local - Type 2b 7. Local - Type 2b	Notes:	Submittal Date: 02/12/2009 09/16/2009 10/30/09	
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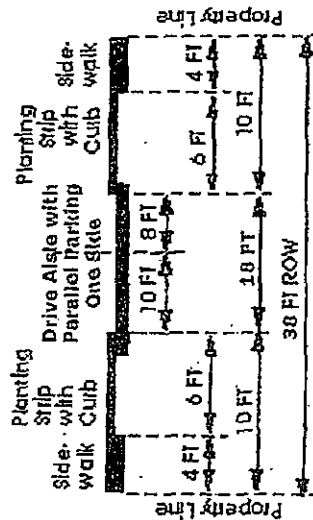
NOTES:

- Owner may choose to use either a WYP Street Standard or a TCM City Street Standard
- Landscaping within the curb basis will be in accordance with minimum City landscaping requirements

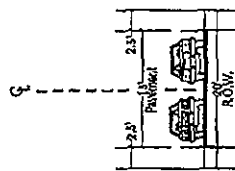


⑧ Local - One Way Whisper Valley PUD Plan

- Conditions:
1. Parking lanes may be on either side of roadway.
 2. Minimum length shall be 300' of roadway.
 3. No points of access and no deadends.
 4. Consideration of off-street parking shall be given.
 5. ESD #12 and the Fire Marshal is required at preliminary plan review.
 6. Access restriction via the ROW shall enforce no parking on the roadway.

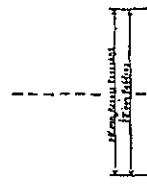


Mixed residential One Way City of Austin TND Street Classification and Streetscape Standards



⑨ Access Alley Whisper Valley PUD Plan

- Conditions regarding alleys serving lots fronting on common open space:
1. Alleys will be part of a Joint Use Access Easement.
 2. Buildings adjacent to the alleys are limited to three (3) stories.
 3. Alleys are not licensed for the collection access.
 4. Lots will be designed to meet fire protection code requirements for interior stairways (when less than 57' access, hose length, and the hydrant location).
 5. Signoff from ESD #12 and Fire Marshal is required at preliminary plan review.
 6. Adequate off-street parking for vehicles will be provided.
 7. Flag lot with a minimum width of 10 feet may only be used with the utility alley and fronting on common open space.
 8. Ch lots fronting on common open space, each lot will connect to a public street through the common open space.



Alley Figure 1-44

City of Austin

Transportation Criteria Manual, Sept. 2003 Supplement

Whisper Valley PUD

Austin, Texas

Street Section Comparison

8. Local - One Way
9. Alley

Notes:

NOTES:

- Owner may choose to use either a WYP Street Standard or a TCM City Street Standard
- Landscaping within the curb basis will be in accordance with minimum City landscaping requirements

Submittal Date:

02/12/2009

09/16/2009

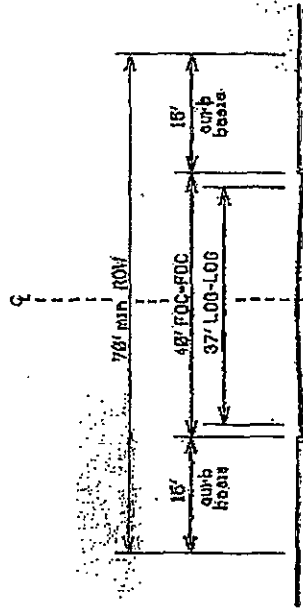
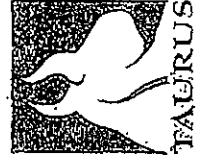
10/30/09

12/07/09

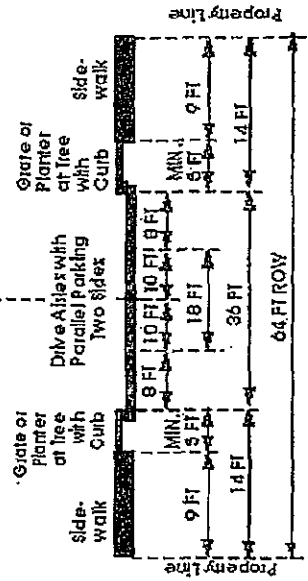


NOTES:

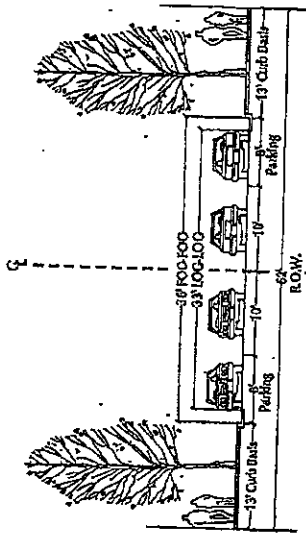
Whisper Valley PUD
Austin, Texas
Street Section Comparison
10. Local Urban Retail/MU
Notes:
Submittal Date:
02/12/2009
09/16/2009



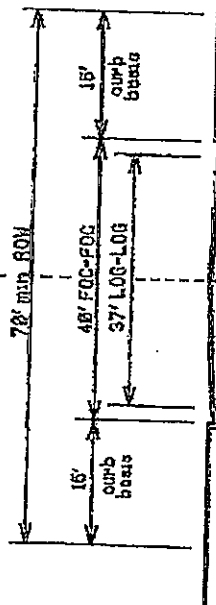
Alternative Commercial Collector, Figure 1-52
City of Austin Transportation and Public Services Department
Transportation Criteria Manual, Sept. 2003 Supplement



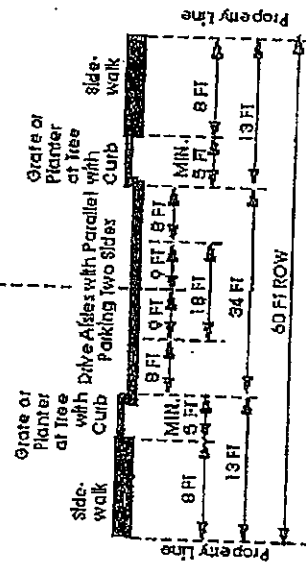
Neighborhood Center Main Street
City of Austin
TND Street Classifications and Streetscape Standards



11 Local Urban - Residential
Whisper Valley PUD Plan



Alternative Neighborhood Collector, Figure 1-50
City of Austin Transportation and Public Services Department
Transportation Criteria Manual, Sept. 2003 Supplement



Neighborhood Center Avenue
City of Austin
TND Street Classifications and Streetscape Standards

NOTES:

- This section typically will apply to Mixed Use street-oriented residential zones
- Lower design speeds and shorter block lengths allow for narrower lane.
- Sidewalks shall be a minimum of 5' in width.
- Owner may choose to use either a WYP Street Standard or a TCM City Street Standard
- Landscaping within the curb basis will be in accordance with minimum City landscaping requirements
- Trees will be planted in the planting zone per Urban Roadway Standards of the Commercial Design Standards.

Whisper
Valley
PUD

Austin, Texas

Street Section
Comparison

11. Local Urban
Residential

Notes:

Submittal Date:

02/12/2009

09/16/2009

10/30/09

03/26/10



"Exhibit G"

WHISPER VALLEY PUD C814-2009-0094

Exhibit D Compatibility Standards and Regulations

A. Compatibility Standards

Within the boundaries of the Whisper Valley PUD, Subchapter C, Article 10 (*Compatibility Standards*) does not apply, except as modified below:

1. When a use that is permitted in a SF-6 or less restrictive zoning district (i.e., a multifamily, commercial, or industrial use) is across the street or adjoining property on which a use permitted in a SF-5 or more restrictive zoning district is located (i.e., a single family residential use), the massing and scale of such multifamily, commercial or industrial use shall be appropriate in relationship to the single family residential use. The massing of buildings and the appropriate scale relationship of a building to another building may be accomplished by:
 - (1) avoiding the use of a continuous or unbroken wall plane;
 - (2) using an architectural feature or element that:
 - (a) creates a variety of scale relationships;
 - (b) creates the appearance or feeling of a residential scale; or
 - (c) is sympathetic to a structure on an adjoining property; or
 - (3) using material consistently throughout a project and that is human in scale; or
 - (4) using a design technique or element that:
 - (a) creates a human scale appropriate for a residential use; or
 - (b) prevents the construction of a structure in close proximity to a single family residential use that is:
 - (i) significantly more massive than the single family residential use; or
 - (ii) antithetical to an appropriate human scale; and
 - (c) allows the construction of a structure, including a multi-family structure, that exhibits a human scale and massing that is appropriate for a residential use.

2. A 25 -foot vegetative buffer area shall be provided and maintained between single family residential uses and any commercial, civic, industrial, or multifamily uses. The buffer is measured from the property line of a single family residential use to a building developed with a commercial, civic, industrial, or multifamily use. (Figure 1). Mixed use buildings are excluded provided they contain residential uses.

Improvements permitted within the 25-foot vegetative buffer zone are: hike and bike trails, pedestrian trails, sidewalks, solid fences, utility easements and improvements, or those improvements that may otherwise be required by the City of Austin or specifically authorized in this ordinance.

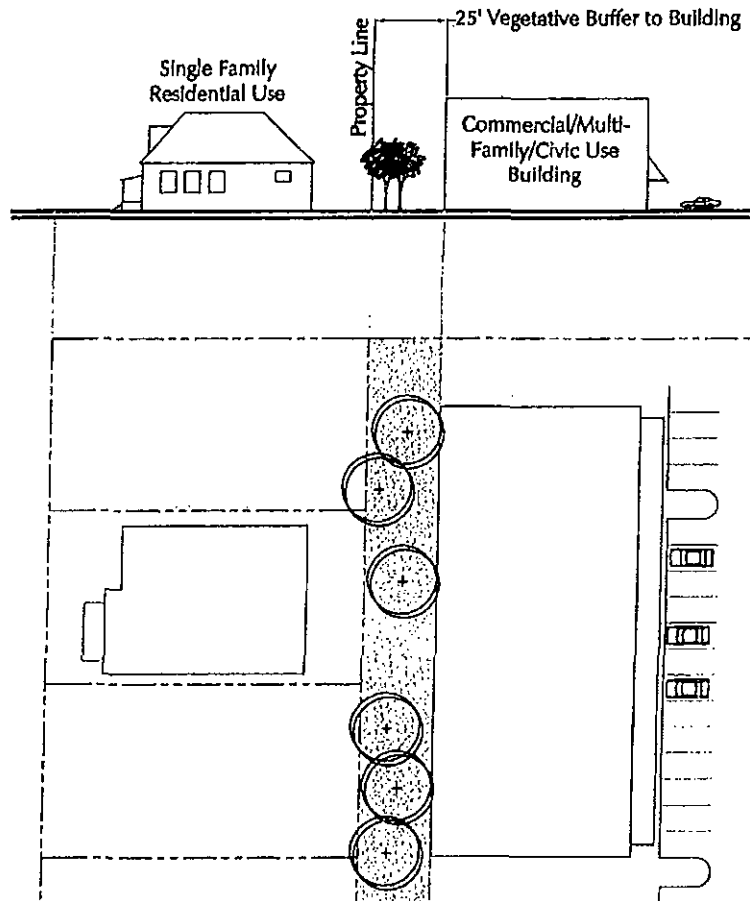


FIGURE 1: 25 foot vegetative buffer between a Residential Use and Commercial and Civic Use buildings.

3. A 100 feet wide buffer area measured from a property line of a single family residential use or a multifamily use (including a vertical mixed use) to an industrial use building shall be provided and maintained, (Figure 2):
 - i. To the extent any of the 25 foot vegetative buffer described in subpart 2 above is contained within the 100 foot buffer described in the subpart 3, then the provisions of subpart 2 shall control with respect to that 25 feet (i.e., a total of 100' buffer with the first 25' being vegetative).
 - ii. Improvements permitted within the 100-foot wide buffer zone are: hike and bike trails, pedestrian trails, sidewalks, solid fences, detention, water quality and drainage facilities consisting primarily of earthen structures, utility easements and improvements, streets, alleys, driveways, surface parking facilities limited to 12 parking spaces or fewer, or those improvements that may otherwise be required by the City of Austin or specifically authorized in this ordinance.

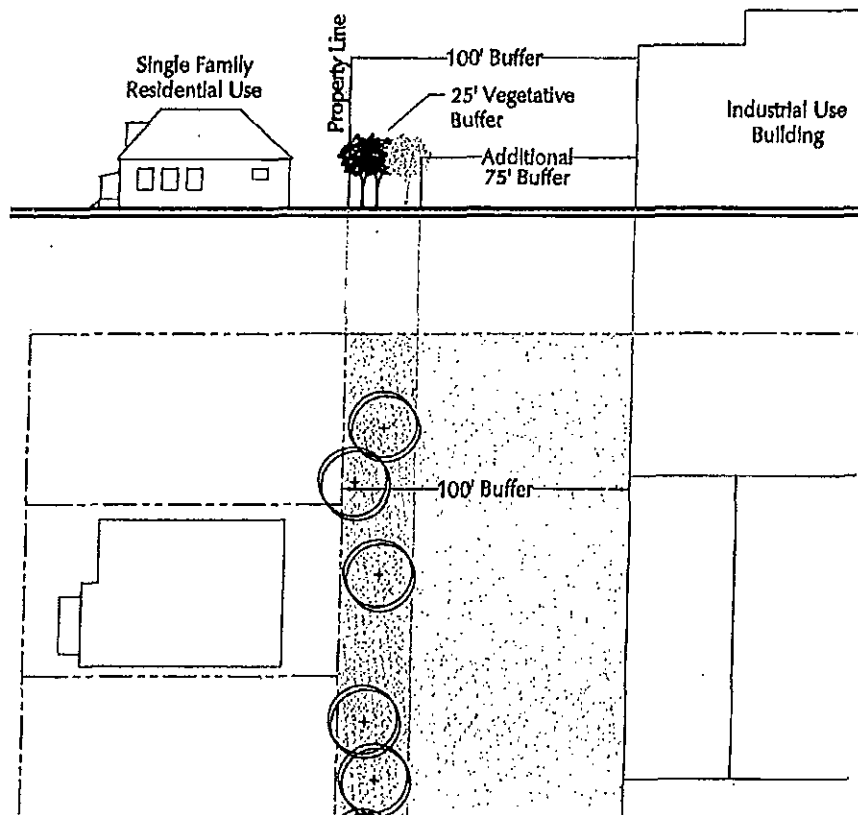


FIGURE 2: 25 foot vegetative buffer with an additional 75-foot wide buffer area for a total of 100 feet between a Residential Use and Industrial Use buildings.

4. Height restrictions between Land Use Categories are as follows:
- i. Within 70 feet of a single family detached residential lot located in the R Land Use Category, a building in the C Land Use Category may not exceed a height of 40 feet.
 - ii. Between 70 feet and 120 feet from a single family detached residential lot, a building in the C Land Use Category may not exceed a height of 50 feet.
 - iii. Beyond 120 feet of a single family residential lot a building in a C Land Use Category may be constructed to the permitted height as specified in on Table D-3.

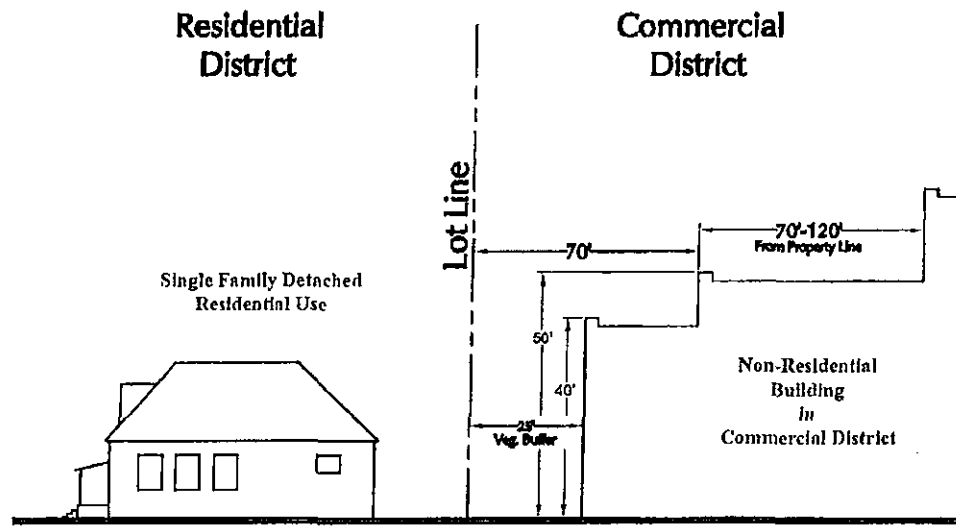


FIGURE 3: Height Restrictions between Single Family Detached Residential Use within a Residential District and Commercial Use Building within a Commercial District.

- iv. Within 50 feet of a single family residential lot a building in the MU Land Use Category may not exceed 15 feet above the height of the applicable single family residential building type's permitted height as specified on Table D-1.
- v. Beyond 50 feet of a single family residential lot, a building in the MU Land Use Category may be constructed to the permitted height as specified on Table D-2.

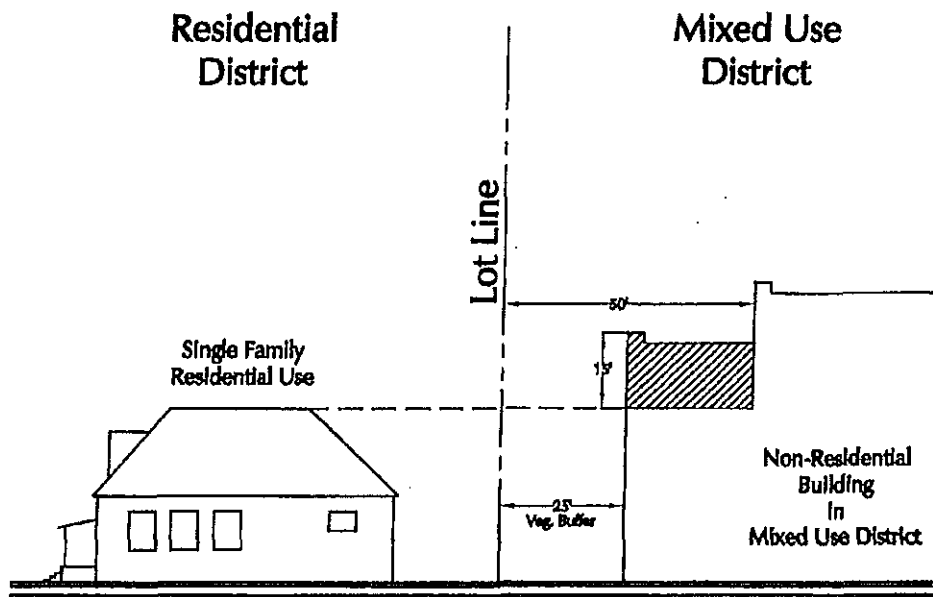


FIGURE 4: Height Restrictions between Single Family Residential Use within a Residential District and a Mixed Use Building within a Mixed Use District.

- vi. Within 50 feet of a single family residential lot in the MU Land Use Category, a building in the C Land Use Category may not exceed 15 feet above the height of the applicable residential building type's permitted height as specified on Table D-2.
- vii. Between 50 feet and 100 feet from a single family residential lot in the MU Land Use Category, a building in the C Land Use Category may not exceed 30 feet above the height of the applicable single family residential building type's permitted height as specified on Table D-2.
- viii. Beyond 100 feet of a single family residential lot in the MU Land Use Category, a building in the C Land Use Category may be constructed to the permitted height as specified on Table D-3.

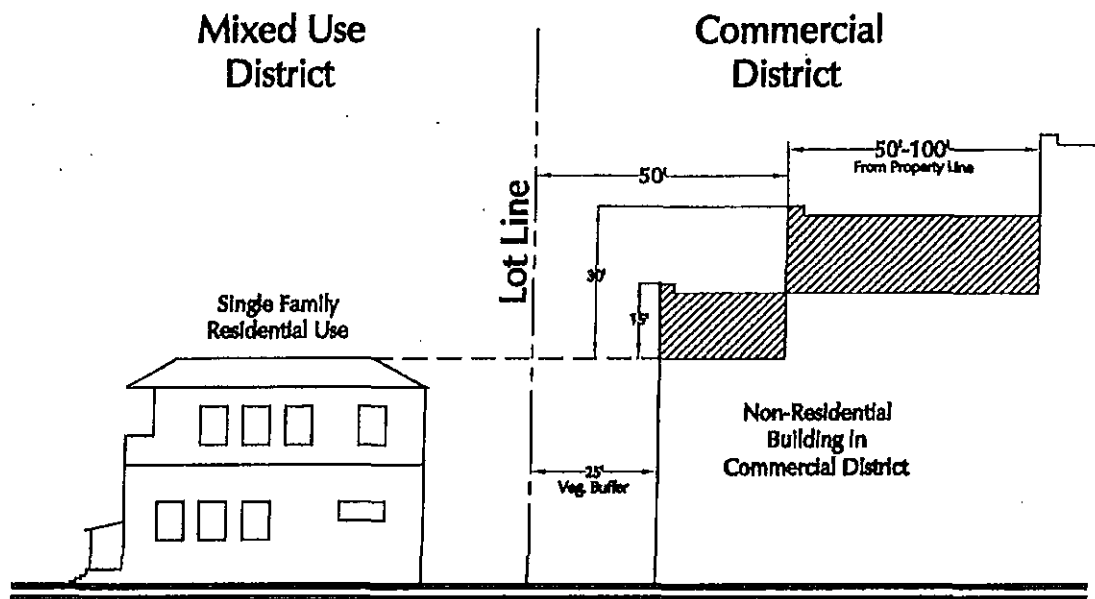


FIGURE 5: Height Restrictions between Single Family Residential Use within a Mixed Use District and a Building within a Commercial District.

5. Screening Requirements

- i. Each area on a property that is used for a following activity shall be screened from the view of adjacent property that is used for a single family or multifamily residential use (including a vertical mixed use):
 - (1) off-street parking containing more than 12 spaces;
 - (2) the placement of mechanical equipment;
 - (3) storage; or
 - (4) refuse collection.
 - ii. A person may comply with this subsection by providing a yard, fence, berm, or vegetation. If a fence is provided, the height of the fence may not exceed six feet, except as otherwise permitted by Section 25-2-899 (*Fences As Accessory Uses*).
 - iii. The owner must maintain a fence, berm, or vegetation provided under this such section.
6. The noise level of mechanical equipment may not exceed 70 decibels at the property line.
 7. The use of highly reflective surfaces, including reflective glass and reflective metal roofs with a pitch of more than a run of seven to a rise of 12, is prohibited. This prohibition does not apply to solar panels and copper or painted metal roofs.
 8. Dumpsters and permanently placed refuse receptacles must be located at least 25 feet from adjacent residential uses. The location of and access to dumpsters or any other refuse receptacles must comply with the Transportation Criteria Manual.
 9. Subsection C of Section 25-2-1006 (A) (1) (2) (*Visual Screening*) does not apply to the PUD.

10. Residential Lot Definitions

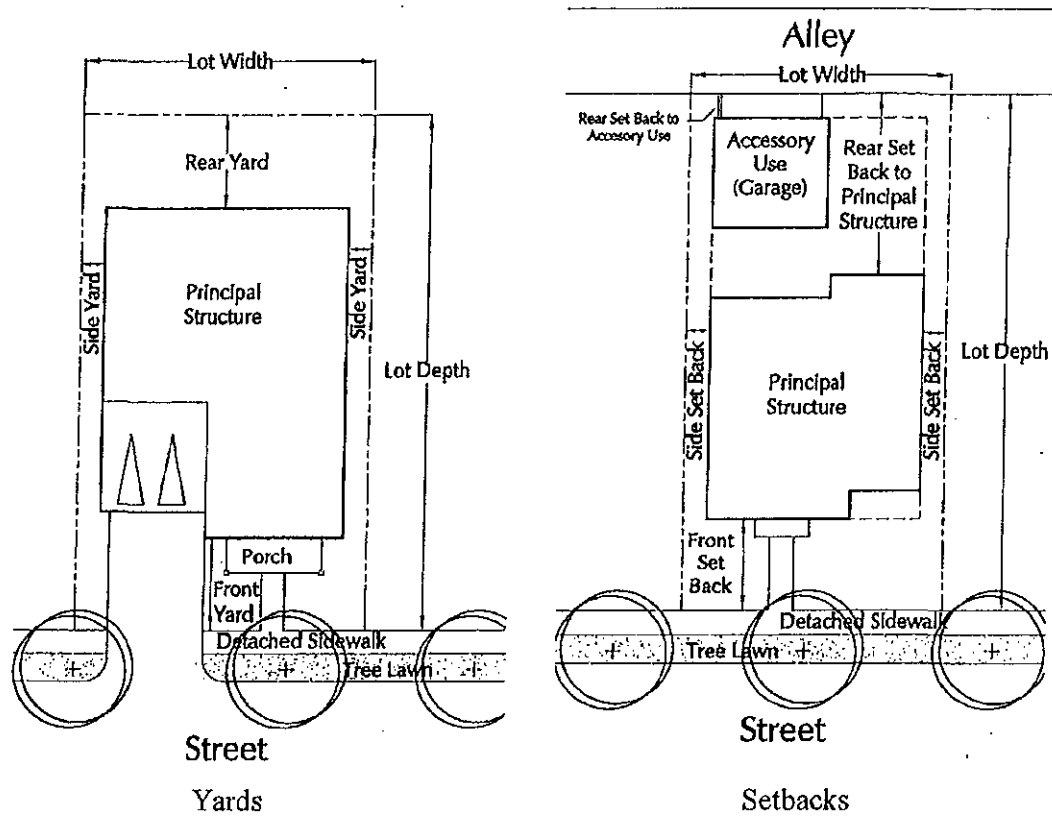


FIGURE 6: Lot Definitions

11. General Restaurant uses in a Residential Districts

General Restaurant use located in a Residential District will be (i) at the intersection of two collector streets or a collector and an arterial or solely on an arterial; or at the intersection of a collector and a neighborhood street, and (ii) have a minimum lot size of 40,000 square feet, with a 55 feet building setback as measured from any single family detached lot. In any event a General Restaurant use in a Residential District will have to outdoor music.

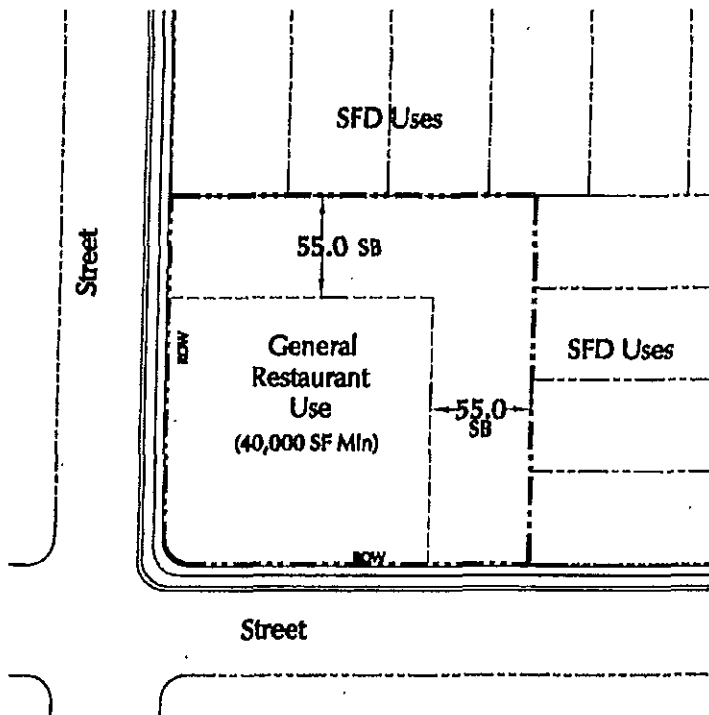


FIGURE 7: General Restaurant Uses

B. Additional Regulations for Residential and Mixed Use Districts

1. A commercial off-street parking use may not exceed one acre in site size. Not more than one commercial off-street parking Use site may be located in a block. A site must be screened from the street by low hedges or walls not less than three feet and not more than four feet in height.
2. A residential use with street level living space must have a finished first floor elevation not less than eighteen inches above the elevation of the sidewalk at the front lot line. A residential use may not front at ground level on a square.
3. A telecommunications tower must be located on top of a building or be an architectural component of the building. Free standing towers are prohibited.

4. Garage Placement Criteria

- i. Rear-Alley loaded garages
 - 1. Attached or Detached garages permitted
- ii. Front-Loaded Side Drive garages
 - 1. Attached or Detached garages permitted
- iii. Front-Loaded Recessed garages

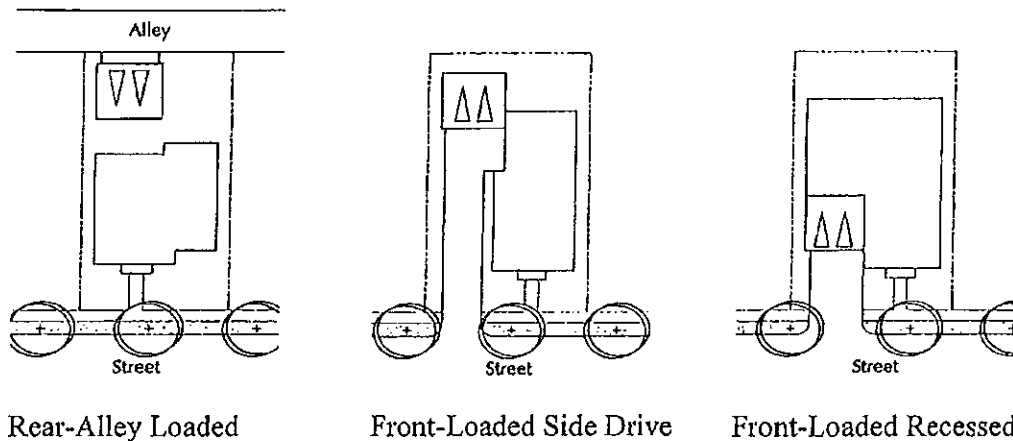


FIGURE 8: Garage Placement Examples

C. Additional Regulations for Commercial District

1. Parking Areas

- a. Parking lots and cars should not be dominant visual elements of the site, Large expansive paved areas located between the street and building shall be avoided in favor of smaller multiple lots separated by landscaping and buildings.
- b. Parking areas should be buffered from public view through the use of berming, landscaped hedges, and/or decorative low walls.
- c. Landscape islands should be located every 15 spaces, and paved walkways between rows of parking should terminate at building entrances.

2. Pedestrian and Vehicular Circulation

Whisper Valley PUD

- a.* Where feasible, establish off-street open space/greenway links between commercial districts and adjacent neighborhoods and public facilities.
- b.* Whenever pedestrian and vehicular traffic meet, paving and signage need to alert drivers to the presence of pedestrians.
- c.* Streets and pathways should lead directly to visual anchors and/or focal points.
- d.* Circulation features should be designed to signal the user to the entrance or exit from the Commercial District or individual parcel. The entry /exit function is a critical means of defining a sequence of movement throughout the Whisper Valley commercial planning areas.

3. Urban Design

- a.* Pedestrian activities such as “al fresco” dining along the sidewalk should be promoted to enhance the character of the commercial district.
- b.* Where appropriate, use formal streetscape treatments such as parkway strips between street and sidewalk, regularly spaced canopy trees, and special paving to denote pedestrian zones.
- c.* Create pedestrian areas in a “Main Street” format that encourages pedestrian activity while accommodating vehicular requirements.
- d.* The use of pedestrian promenades characterized by outdoor plaza elements between buildings should create unity, cohesiveness and a sense of space while promoting walkable pedestrian activity centers.
- e.* Building entries should incorporate pedestrian elements and amenities such as seating, lighting, and hardscape elements that help create or enhance special pedestrian areas.

4. Architectural Character

- a.* Modern vernacular shall be promoted within the Commercial Districts of Whisper Valley.
- b.* Varying facade elements, such as inseting window areas, entries and/or projections of building volumes should always be considered.

5. Building Scale and Massing

- a.* Building mass should be broken down where possible. Horizontal breaks and vertical projections will effectively reduce the perceived scale of buildings.
- b.* Consider the use of “stepped-down” buildings to break up larger structures, particularly those over 3 stories in height.
- c.* Buildings should contribute to pedestrian comfort and enjoyment. Buildings adjacent to sidewalks should provide human scale and relationships

6. Service, Loading and Special Equipment Areas

- a.* All storage areas shall be located on the side or rear portions of buildings.
- b.* No service, storage, maintenance, or loading areas shall extend into a setback area.
- c.* Loading areas shall be entirely located on-site. Off-site vehicle loading is not permitted.

EXHIBIT "H"

WHISPER VALLEY PUD C814-2009-0094 ZONING USE SUMMARY TABLE EXHIBIT E

Land Use	Residential District	Mixed Use District	Commercial District	Open Space District
RESIDENTIAL USES				
Bed & Breakfast (Group 1)	P ¹	P	P	NP
Bed & Breakfast (Group 2)	P ¹	P	P	NP
Condominium Residential	P ¹	P	P ²	NP
Duplex Residential	P	NP	NP	NP
Group Residential	P ¹	P	P	NP
Mobile Home Residential	NP	NP	NP	NP
Multi-family Residential	P ¹	P	P ²	NP
Retirement Housing (Small Site)	NP	P	NP	NP
Retirement Housing (Large Site)	NP	P	NP	NP
Single-Family Attached Residential	P	P	P ²	NP
Single-Family Residential	P	NP	NP	NP
Small Lot Single-Family Residential	P	NP	NP	NP
Townhouse Residential	P ¹	P	P ²	NP
Two-Family Residential	P	NP	NP	NP
COMMERCIAL USES				
Administrative and Businesses	P ³	P	P	NP
Offices				
Agricultural Sales and Services	NP	NP	NP	NP

P = Permitted

NP = Not Permitted

C = Conditional Use

Land Use	Residential District	Mixed Use District	Commercial District	Open Space District
Art Gallery	P ⁴	P	P	NP
Art Workshop	P ⁴	P	P	NP
Automotive Rentals	NP	C	P ³	NP
Automotive Repair Services	NP	C	P ⁶	NP
Automotive Sales	NP	NP	C	NP
Automotive Washing (of any type)	C	P	P	NP
Bail Bond Services	NP	NP	NP	NP
Building Maintenance Services	NP	P	P	NP
Business or Trade School	NP	P	P	NP
Business Support Services	NP	P	P	NP
Campground	NP	NP	NP	NP
Carriage Stable	NP	NP	NP	NP
Cocktail Lounge	NP	C	P ¹⁴	NP
Commercial Blood Plasma Center	NP	C	P	NP
Commercial Off-Street Parking	NP	P	P	NP
Communication Services	NP	P	P	NP
Construction Sales and Services	NP	C	P	NP
Consumer Convenience Services	P ⁴	P	P	NP
Consumer Repair Services	P ⁴	P	P	NP
Convenience Storage	NP	P	P	NP
Drop-Off Recycling Collection Facility	NP	C	P	NP
Electronic Prototype Assembly	NP	C	P	NP
Electronic Testing	NP	C	P	NP
Equipment Repair Services	NP	NP	C	NP

P = Permitted

NP = Not Permitted

C = Conditional Use

Land Use	Residential District	Mixed Use District	Commercial District	Open Space District
Equipment Sales	NP	NP	P	NP
Exterminating Services	NP	C	P	NP
Financial Services	P ⁴	P	P	NP
Food Preparation	NP	P	P	NP
Food Sales	P ⁴	P	P	NP
Funeral Services	NP	NP	P	NP
General Retail Services (Convenience)	P ⁴	P	P	NP
General Retail Services (General)	NP	P	P	NP
Hotel-Motel	NP	P	P	NP
Indoor Entertainment	NP	P	P	NP
Indoor Sports and Recreation	P	P	P	P
Kennels	NP	P ⁷	P	NP
Laundry Services	NP	C	P	NP
Liquor Sales	NP	C	P ¹⁴	NP
Marina	NP	NP	NP	NP
Medical Offices - exceeding 5000 sq. ft. gross floor area	NP	C	P	NP
Medical Offices - not exceeding 5000 sq. ft. gross floor area	NP	P	P	NP
Monument Retail Sales	NP	NP	P	NP
Off-Site Accessory Parking	C	C	C	NP
Outdoor Entertainment	NP	P	P	P
Outdoor Sports and Recreation	P	P	P	P
Pawn Shop Services	NP	NP	NP	NP
Personal Improvement Services	P ⁴	P	P	NP
Personal Services	P ⁴	P	P.	NP

P = Permitted

NP = Not Permitted

C = Conditional Use

Land Use	Residential District	Mixed Use District	Commercial District	Open Space District
Pet Services	P ⁴	P	P	NP
Plant Nursery	NP	P	P	NP
Printing and Publishing	NP	C	P	NP
Professional Office	P ³	P	P	NP
Recreational Equipment Maint & Storage	NP	C	P	NP
Recreational Equipment Sales	NP	NP	P	NP
Research Assembly Services	NP	C	P	NP
Research Services	NP	C	P	NP
Research Testing Services	NP	C	C	NP
Research Warehousing Services	NP	C ⁸	C ⁸	NP
Restaurant (General)	P ⁴ B ³	P	P	NP
Restaurant (Limited)	P ⁴	P	P	NP
Scrap and Salvage	NP	NP	NP	NP
Service Station	C ⁹	P	P	NP
Software Development	NP	P	P	NP
Special Use Historic	NP	NP	NP	NP
Stables	P ¹	NP	NP	P
Theatre	NP	P	P	NP
Vehicle Storage	NP	NP	NP	NP
Veterinary Services	C	P	P	NP
INDUSTRIAL USES				
Basic Industry	NP	NP	NP	NP
Custom Manufacturing	NP	C ¹⁰	P	NP
General Warehousing and Distribution	NP	NP	NP	NP

P = Permitted

NP = Not Permitted

C = Conditional Use

Land Use	Residential District	Mixed Use District	Commercial District	Open Space District
Light Manufacturing	NP	C ¹⁰	P	NP
Limited Warehousing and Distribution	NP	P	P	NP
Recycling Center	NP	NP	C	NP
Resource Extraction	C	C	P	NP
AGRICULTURAL USES				
Urban Farm	P ¹¹	P ¹¹	P ¹¹	NP
All Other Agricultural	P ¹¹	P ¹¹	P ¹¹	NP
CIVIC USES				
Administrative Services	P	P	P	NP
Aviation Facilities	NP	NP	NP	NP
Camp	P	P	P	P
Cemetery	NP	NP	NP	NP
Club or Lodge	P ⁴	P	P	P
College and University Facilities	NP	P	P	NP
Communication Service Facilities	P	P	P	NP
Community Events	C	C	P	P
Community Recreation (Private)	P	P	P	P
Community Recreation (Public)	P	P	P	P
Congregate Living	C	P	P	NP
Convalescent Services	NP	P	P	NP
Convention Center	NP	P	P	NP
Counseling Services	NP	P	P	NP
Cultural Services	P	P	P	P
Day Care Services (Commercial)	P ⁴	P	P	NP
Day Care Services (General)	P ⁴	P	P	NP

P = Permitted NP = Not Permitted C = Conditional Use

Land Use	Residential District	Mixed Use District	Commercial District	Open Space District
Day Care Services (Limited)	P	P	P	NP
Detention Facilities	NP	NP	NP	NP
Employee Recreation	NP	P	P	NP
Family Home	NP	P	P	NP
Group Home, Class I (General)	NP	P	P	NP
Group Home, Class I (Limited)	C	P	P	NP
Group Home, Class II	NP	C	C	NP
Guidance Services	C	P	P	NP
Hospital Services (General)	NP	C	P	NP
Hospital Services (Limited)	NP	NP	P	NP
Local Utility Services	P	P	P	P
Maintenance and Service Facilities	NP	NP	C	NP
Major Public Facilities	P ¹²	C	C	NP
Major Utility Facilities	C	C	C	NP
Military Installations	NP	NP	NP	NP
Park and Recreation Services (General)	P	P	P	P
Park and Recreation Services (Special)	NP	C	P	P
Postal Facilities	C	P	P	NP
Private Primary Education Facilities	P ¹	P	P	NP
Private Secondary Education Facilities	P ¹	P	P	NP
Public Primary Education Facilities	P ¹	P	P	NP
Public Secondary Education Facilities	P ¹	P	P	NP
Railroad Facilities	NP	NP	NP	NP

P = Permitted

NP = Not Permitted

C = Conditional Use

Land Use	Residential District	Mixed Use District	Commercial District	Open Space District
Religious Assembly	P	P	P	P
Residential Treatment	C	C	C	NP
Safety Services	P ¹	P	P	NP
Telecommunication Tower	C	P ¹	P	C
Transitional Housing	NP	NP	C	NP
Transportation Terminal	P ¹	P	P	P ¹ s
All other Civic Uses				C

P = Permitted

NP = Not Permitted

C = Conditional Use

Notes:

General Notes:

- If not explicitly listed as a single family use, the use will follow the multifamily building type standards
- Civic and Industrial uses are to be treated as Commercial uses/buildings. Civic Uses will follow the LR-MU site development regulations on Exhibit D-1 if located within open space
- Industrial Uses are subject to LDC 25-2-648
- Commercial Uses within the Residential District shall be limited to :
 - A maximum of 10,000 gross square feet for commercial uses within a center located at the intersection of a collector street and a neighborhood street. Each maximum area must be separated by 0.25 miles.
 - A maximum of 30,000 gross square feet for commercial uses within a center located at the intersection of a two collector streets. Each maximum area must be separated by 0.25 miles.
 - A maximum of 65,000 gross square feet for commercial uses within a center located at the intersection of a collector and an arterial street. Each maximum area must be separated by 0.25 miles.

Specific Notes:

- 1 Refer to Exhibit D for compatibility requirements related to this use.
- 2 Only as part of a Vertical Mixed Use
- 3 No individual use shall exceed 25,000 square feet
- 4 No individual use shall exceed 5,000 square feet
- 5 25-3-105(A) An automotive rental use may keep not more than 20 vehicles on site.
- 6 25-3-105(B) An automotive repair services use may not exceed 2,400 square feet of gross building area
- 7 Only in an enclosed structure
- 8 Must be stored indoors

9 25-3-105(H) A service station use may have the capability of fueling not more than 12 vehicles at one time and is subject to compatibility requirements in
10 Exhibit D
11 No outside storage and no individual use shall exceed 100,000 square feet
12 Only if an existing use, per Development Agreement
13 Only use allowed is a regional wastewater treatment plant per cost reimbursement agreement with City
14 A General Restaurant use located in a Residential District will be (i) at the intersection of two collector streets or a collector and an arterial or solely on an
arterial; or at the intersection of a collector and a neighborhood street, and (ii) have a minimum lot size of 40,000 square feet, with a 55 feet building setback
as measured from any single family detached lot. In any event a General Restaurant use in a Residential District will have no outdoor amplified music. See
Exhibit D Whisper Valley Site Development Regulations, Section A.11, Figure 7.
The cumulative maximum gross square feet of Cocktail Lounge and Liquor Sales uses are permitted in each of the Commercial District Planning Areas (PA)
up to the maximum shown. Additional square footage beyond these maximums requires a Conditional Use Permit (CUP):

PA 2	10,000 sf
PA 8	10,000 sf
PA 13	10,000 sf
PA 14	10,000 sf
PA 18	10,000 sf

Limited to four (4) acres of impervious cover over five (5) acres per location shown on Land Use Plan.

EXHIBIT "J"

**WHISPER VALLEY AND INDIAN HILLS
ANNEXATION AND DEVELOPMENT AGREEMENT
Effective as of June 18, 2009**

STATE OF TEXAS §
COUNTY OF TRAVIS §

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- Natural drainage areas, including headwaters and the 100 year floodplain, will be preserved, as described herein.
- Development of the area (save and except single family housing) will adhere to Grow Green requirements.
- Development of the area will adhere to the PUD Green Builder Program.
- Development of the area will meet the City's PUD affordable housing requirements.
- A schedule for consensual full purpose annexation of the area after certain events occur, as well as a means of ensuring that, in the interim, adequate community facilities and services are provided for.

NOW, THEREFORE, for and in consideration of the mutual agreements, covenants, and conditions contained in this Agreement, and other good and valuable consideration, the City and Developer agree as follows:

ARTICLE I.

DEFINITIONS

Section 1.01 Terms Defined in this Agreement. In this Agreement, each of the following terms shall have the meanings indicated:

“Applicable Requirements” shall have the meaning set forth in Section 3.04(a).

“Arbitrable Dispute” shall have the meaning set forth in Section 12.01.

“Arbitration Remedy” shall have the meaning set forth in Section 12.03.

“C” shall mean the commercial land use category for property within Whisper Valley, which includes commercial uses, including retail, office, high quality light industrial uses, convenience storage, and mixed-use commercial / residential uses, as further described in Article III.

“C Site Development Regulations” shall mean the site development regulations for those portions of Whisper Valley designated as C, and which will be more particularly set forth in the Whisper Valley PUD.

“City” shall have the meaning set forth in the recitals to this Agreement.

“City Code” shall mean the City Code of Austin, together with all its related

administrative rules and technical criteria manuals in effect as of the Effective Date.

“City Council” shall mean the City Council of the City or any successor governing body.

“Civic” shall mean the civic land use category for property within Whisper Valley which includes school, fire station, library, transit center, or other civic uses, including the performance of utility, educational, recreational, cultural, medical, protective, and governmental functions and other uses that are strongly vested with public or social importance.

“Dedicated Review Team” shall have the meaning set forth in Section 3.11.

“Designated Successors and Assigns” shall mean an entity to which WV Developer or IH Developer, as applicable, assigns (in writing) all or a portion of its rights and obligations contained in this Agreement pursuant to Section 13.07(a).

“Developers” shall have the meaning set forth in the recitals to this Agreement.

“Development” shall have the meaning set forth in Section 3.03.

“Director” shall mean the Director of the Planning and Development Review Department of the City.

“Effective Date” and similar references shall mean the date defined in Section 13.01.

“ECM” shall mean the Environmental Criteria Manual, as set forth in the Land Development Code.

“ETJ” shall have the meaning set forth in the recitals to this Agreement.

“IH Developer” shall have the meaning set forth in the recitals to this Agreement.

“IH Open Space” shall have the meaning set forth in Section 3.08(d).

“IH PID” shall have the meaning set forth in Section 2.02.

“IH PID Agreement” shall have the meaning set forth in Section 2.02.

“IH Property” shall have the meaning set forth in the recitals to this Agreement.

“Indian Hills” shall have the meaning set forth in the recitals to this Agreement.

“Indian Hills Zoning Ordinance” shall have the meaning set forth in Section

3.01(b).

“Land Development Code” shall mean the Land Development Code of the City, codified as Titles 25 and 30 of the City Code.

“Land Use Category” or **“Land Use Categories”** shall mean the land use categories for property within Whisper Valley, specifically R, C, MU, Civic, or OS.

“Limited Purpose Annexation” shall have the meaning set forth in Section 5.01(a).

“Manville” shall mean Manville Water Supply Corporation.

“M&O Assessment” shall have the meaning set forth in Exhibit “H”.

“MU” shall mean the land use category for property within Whisper Valley which may include any use allowed within R Land Use Category other than single family detached, or any use allowed in the C Land Use Category, as set forth in Article III.

“MU Site Development Regulations” shall mean the site development regulations for those portions of Whisper Valley designated MU, which will be more particularly set forth in the Whisper Valley PUD.

“Notice” shall have the meaning set forth in Section 13.09.

“Ordinances” shall mean the ordinances of the City in effect as of the Effective Date.

“OS” shall mean the open space land use category for property within Whisper Valley as further described in Article III, which category shall include, notwithstanding anything in the City Code to the contrary, any wet pond or any detention pond generally accessible to the public.

“OS Site Development Regulations” shall mean the site development regulations for those portions of Whisper Valley designated as OS, and which will be set forth in the Whisper Valley PUD.

“PARD” shall mean the City’s Parks and Recreation Department.

“Party” means WV Developer, IH Developer, or City, as Parties to this Agreement, and **“Parties”** means collectively the Developers and the City.

“PID Agreement” shall mean, collectively, the WV PID Agreement and the IH PID Agreement.

“Planning Area” shall mean the planning districts in Whisper Valley generally

depicted on "Exhibit C-2".

"Private Open Space" shall have a meaning set forth in Section 3.08(a).

"Projects" shall have the meaning set forth in the recitals to this Agreement.

"R" shall mean the residential land use category for property within Whisper Valley, which includes single family detached residential, single family attached residential, multi-family residential, neighborhood-scale retail or office uses, as further described in Article III.

"R Site Development Regulations" shall mean the site development regulations for those portions of Whisper Valley designated as R, and which will be more particularly set forth in the Whisper Valley PUD.

"Signature Park" shall have the meaning set forth in Section 3.08(a).

"Term" and similar references shall have the meaning set forth in Section 13.02.

"Whisper Valley" shall have the meaning set forth in the recitals to this Agreement.

"Whisper Valley PUD" shall have the meaning set forth in Section 3.01(a).

"Whisper Valley PUD Ordinance" shall mean the ordinance by the City of Austin approving the Whisper Valley PUD.

"WV Developer" shall have the meaning set forth in the recitals to this Agreement.

"WV Open Space" shall have the meaning set forth in Section 3.08(a).

"WV Property" shall have the meaning set forth in the recitals to this Agreement.

"WV PID" shall have the meaning set forth in Section 2.01.

"WV PID Agreement" shall have the meaning set forth in Section 2.01.

Section 1.02 Other Definitions. All capitalized terms used but not defined in this Agreement shall have the meaning given to them in the City Code.

Article II.

PUBLIC IMPROVEMENT DISTRICT

Section 2.01 Whisper Valley PID. Subject to Section 9.01 below, before or concurrently with limited purpose annexation, approval of the Whisper Valley PUD, and the formation of the Whisper Valley Public Improvement District ("**WV PID**") and subject to the City's receipt of a feasibility study, the Parties intend to enter into the Whisper Valley Public Improvement District Financing Agreement ("**WV PID Agreement**"), in accordance with the terms set forth on Exhibit "**B**" attached hereto.

Section 2.02 Indian Hills PID. Subject to Section 9.01 below, before or concurrently with limited purpose annexation, approval of the Indian Hills Zoning Ordinance, and the formation of the Indian Hills Public Improvement District ("**IH PID**") and subject to the City's receipt of a feasibility study, the City and IH Developer intend to enter into the Indian Hills Public Improvement District Financing Agreement ("**IH PID Agreement**"), in accordance with the terms set forth on Exhibit "**B**" attached hereto.

Section 2.03 Other Financing Tools. In addition, if the City makes available any other tools or forms of financing for infrastructure (other than a PID) available to establish the goals discussed in Recital C above, then the conditions precedent (or other requirements regarding PIDs or PID bonds) in the Agreement may be satisfied by the additional tools and/or forms of financing approved by the City in lieu of or in addition to the WV PID and IH PID.

Article III.

SITE DEVELOPMENT, APPLICABLE ORDINANCES AND RELATED MATTERS

Section 3.01 Ordinances

(a) **Whisper Valley Planned Unit Development.** The Parties acknowledge that this Agreement, along with the Development Assessment previously filed, shall be the basis for the consideration of the Whisper Valley Planned Unit Development ("**Whisper Valley PUD**"). In connection therewith, this Agreement shall constitute WV Developer's request for Limited Purpose Annexation of Whisper Valley. In addition, the Parties acknowledge and agree that the annexation of Whisper Valley by the City for limited purposes and the application of related City land use regulations are conditioned upon the formation of the WV PID and approval of the PUD in accordance with this Agreement.

(b) **Indian Hills Development.** This Agreement shall constitute IH Developer's request for Limited Purpose Annexation of Indian Hills in compliance with Texas Local Government Code Sections 43.121 and 43.129 and other applicable law, and as is provided for in this Section 3.01(b). In addition, the Parties acknowledge and agree that the annexation of Indian Hills by the City for limited purposes and the application of

related City land use regulations are conditioned upon the formation of the IH PID and approval of the Indian Hills Zoning Ordinance (herein so called) in accordance with this Agreement. The locations of zoning categories allowed within Indian Hills in accordance with the Indian Hills Zoning Ordinance are generally shown on Exhibit "C-1" (*IH Zoning Map*). The Parties agree that it is intended that the portions of the IH Property, as shown on Exhibit "C-1", shall be used in a manner that is compliant with uses and as allowed by the City in the "LI", "CS", and "MF-3" classifications, as applicable, as such terms are defined in the current land use Code of the City, or an equivalent successor category, if applicable, which category shall not be materially more restrictive than the uses allowed in the foregoing "LI", "CS", or "MF-3" classification, as applicable, as of the Effective Date of this Agreement. Therefore, the Parties agree that it is intended that upon approval of all site development standards and requirements for use of property located in the "LI", "CS", or "MF-3" classification shall apply to Indian Hills in the locations designated on Exhibit "C-1", unless specifically superseded by the standards and requirements of this Agreement.

Section 3.02 Whisper Valley Land Uses.

(a) **Locations.** The locations of the Land Use Categories intended to be allowed within Whisper Valley are generally shown on Exhibit "C-2" (*Whisper Valley Land Use Plan*). The final version of the Whisper Valley Land Use Plan will be set forth in the Whisper Valley PUD. The Whisper Valley Land Use Plan may be modified from time to time in accordance with City Code, as adjusted by the Whisper Valley PUD. Modifications to the Whisper Valley Land Use Plan shall not require an amendment to this Agreement.

(b) **Site Development Regulations.** Site Development Regulations (including compatibility standards) applicable to each Land Use Category in Whisper Valley will be detailed in the Whisper Valley PUD. The Site Development Regulations set forth in the Whisper Valley PUD are intended to permit (i) vertical mixed-use buildings in the C and MU Land Use Categories to be constructed in accordance with the density regulations applicable to vertical mixed use buildings in the City Code (i.e. exceptions to FAR or site area requirements) and (ii) improvements in the C Land Use Category up to ninety feet (90') in height, subject to compatibility standards contained in the Whisper Valley PUD ordinance. In the event any provision of the City Code or any law, ordinance, or regulation applicable to Whisper Valley is based on a zoning district and is not specifically addressed in the Whisper Valley PUD, then for purposes of interpreting such law ordinance or regulation it is intended that the base zoning district applicable in each Land Use Category is as follows: (i) the base zoning district applicable in the C Land Use Category shall be CS-V; (ii) the base zoning district applicable to the MU Land Use Category shall be GR-V; and (iii) the base zoning district applicable to the R Land Use Category shall be LR-MU.

(c) **Zoning Uses.** Permitted, conditional and prohibited uses applicable to each Land Use Category in Whisper Valley will be set forth in the Whisper Valley PUD; provided, however, it is intended that (i) certain retail and other commercial uses will be

permitted in the R Land Use Category, subject to certain size and scale limitations to be detailed in the Whisper Valley PUD, and (ii) residential uses (other than single-family detached) will be permitted in the C Land Use Category, as further detailed in the Whisper Valley PUD.

Section 3.03 Continuation of Existing Uses and Activities. Those land uses and activities described below that currently exist within Whisper Valley or Indian Hills shall be allowed to continue operating in the same manner, upon limited purpose annexation of Whisper Valley or Indian Hills, as applicable, into the City: (i) agricultural (including, without limitation, ranching and farming uses); and (ii) hunting. Hunting on the WV Property shall be prohibited after issuance of the first building permit for any part of the WV Property. Hunting on the IH Property shall be prohibited after issuance of the first building permit for any part of the IH Property. All other uses and development of Whisper Valley or Indian Hills shall be “**Development**” (herein so called) for purposes of this Agreement.

Section 3.04 Applicable Requirements.

(a) **Controlling Ordinances, Manuals, and Rules.** For a period of fifteen (15) years commencing upon the adoption of the Whisper Valley PUD Ordinance or Indian Hills Zoning Ordinance, as applicable, all of City’s applicable laws, ordinances, manuals, and administrative rules, (including the Land Development Code) as they regard land development as they exist as of the Effective Date of this Agreement shall apply to Development within Whisper Valley or Indian Hills, as applicable, except as otherwise specified in this Agreement. Any reference to any City Code, Ordinance, regulation, manual or any other law shall mean those City Codes, Ordinances, regulations or manuals, design criteria, or other law in effect as of the Effective Date of this Agreement, including, without limitation, commercial design standards (the “**Applicable Requirements**”), without reference to subsequent amendments or supplements thereto. Notwithstanding the above, the City’s Utility Criteria Manual shall be considered an Applicable Requirement regardless of the water or wastewater utility service provider, and such manual and its subsequent amendments or modifications shall apply to this Agreement. In the event of any conflict between the terms or provisions of this Agreement and the Applicable Requirements, this Agreement shall control. Notwithstanding the foregoing, subject to the terms of this Agreement, any Development within the Projects shall comply with subsequently adopted municipal regulations described in §245.004, Local Government Code, unless any such subsequent regulations conflict with an express term or provision of this Agreement, in which event this Agreement controls. Developers do not waive any of their rights provided by Chapter 245 of the Texas Local Government Code, provided that this Agreement shall constitute a permit under Section 212.172(g), Local Government Code, only so long as it remains in effect and is not terminated or superseded. WV Developer or IH Developer may, in each of their sole discretion, choose to comply with any amendment or supplement to the Applicable Requirements or other City rule promulgated after the Effective Date hereof. Notwithstanding any other term or provision of this Agreement to the contrary, permanent structures constructed with the Projects shall comply with the then (at time of application for building permit) current building code adopted by the City.

(b) **No Special Fees.** In no event will the City impose any special fees for administering the terms of this Agreement.

Section 3.05 Civic Use.

(a) **Type and Location.** Subject to the conditions and limitations described in this Section 3.05, Developer intends to include the following civic uses within Whisper Valley, approximately in the locations shown on Exhibit "C-2" (*Whisper Valley Land Use Plan*) attached hereto:

- i. Public Safety facilities (Fire, EMS, Police Sheriff);
- ii. Schools;
- iii. Library; and
- iv. Transit Center.

The locations shown on Exhibit "C-2" are approximate. WV Developer has the right in its reasonable discretion to relocate such uses as may be necessary to accommodate other Development within Whisper Valley. The final locations and any subsequent relocations of any and all of the sites is subject to City approval, such approval not to be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, the terms and conditions concerning the Public Safety Site shall be determined in accordance with the terms in Subsection (e) below.

(b) **Site Development Regulations.** Civic Use Development shall comply with the Site Development Regulations for the Land Use Category applicable to the district in which such Civic Use Development is located (e.g., a civic use in an R Planning Area shall comply with Site Development Regulations applicable to the R Planning Area set forth in the Whisper Valley PUD).

(c) **Transit Center.** The City may reserve for development of a Transit Center of not more than five (5) acres, in one of the approximate alternative locations shown on Exhibit "C-2" attached hereto, or other location approved by WV Developer. In any event, the final location of the Transit Center shall be subject to approval by the WV Developer, such approval not to be unreasonably withheld, conditioned or delayed. In the event all or any portion of the Transit Center will be located within Whisper Valley on land outside the WV Open Space, the City shall purchase such land from WV Developer at fair market value as determined by an appraiser mutually agreeable to Developers and the City within five (5) years after the later of limited purpose annexation of or approval of a preliminary plan for the WV Property where the Transit Site would be located .

(d) **Schools.** The Parties acknowledge that Whisper Valley is located within the Del Valle Independent School District ("**DVISD**"). WV Developer intends to provide up to two (2) sites for schools to DVISD. Exhibit "C-2" shows the approximate

location of potential school sites. Nothing in this Agreement shall be construed to prevent WV Developer from negotiating with or receiving compensation from DVISD for the purchase of land within Whisper Valley for the purpose of constructing schools, including, without limitation, in locations generally designated on Exhibit "C-2" hereto.

(e) **Public Safety Site.** The Parties acknowledge that Whisper Valley and Indian Hills are currently located within the jurisdiction of Travis County Emergency Services District #12 ("**TCESD #12**") Upon request by the City at any time after a preliminary plan for any portion of the WV Property has been filed, WV Developer shall convey to the City at no expense to the City one (1) site of no more than two (2) net developable acres for the purpose of constructing a Public Safety Facility ("**Initial Public Safety Facility Site**") at a location to be determined by the WV Developer and the City before adoption of the Whisper Valley PUD ordinance. Pursuant to a separate agreement, the City and TCESD #12 will outline the terms and conditions of TCESD #12 use of the Initial Public Safety Facility Site. The Parties intend that the City will be able to exchange the Initial Public Safety Facility Site for an alternate site for first responder facilities ("**Alternative Site**") within the WV Property or sell the Initial Public Safety Site for private development and use the proceeds to establish an Alternate Site outside the WV Property, provided it shall be in a location permitting the City to provide fire protection and emergency response service to the WV Property. The Parties will address the location criteria for the Alternative Site and the mechanisms for addressing the service provider transition from TCESD #12 to the City during the PUD process.

(f) **Library.** In the event the City intends to construct a library within Whisper Valley, the WV Developer will provide a site for such library in one of the approximate locations shown on Exhibit "C-2". If the City so elects, then (i) the City shall pay fair market value for the land as determined by an appraiser mutually agreeable to Developers and the City, (ii) such election and payment shall occur within five (5) years after the later of limited purpose annexation of or approval of a preliminary plan for the WV Property where the library will be located, and (iii) the actual location and size of the site shall be subject to the WV Developer's approval, such approval not to be unreasonably withheld, conditioned or delayed. WV Developer and IH Developer agree that no library district may be created for the WV Property or IH Property and shall not petition for creation of a library district.

Section 3.06 Green Builder. The WV Developer and IH Developer will be required to comply with the City PUD Green Builder Program.

Section 3.07 Impervious Cover.

(a) Notwithstanding any provisions of the City Code to the contrary, impervious cover limits for Whisper Valley in the C and MU Land Use Categories, with respect to both watershed and zoning limitations, are intended to be 70% for multifamily and 90% for commercial.

(b) Notwithstanding any provisions of the City Code to the contrary, impervious cover limits for Whisper Valley in the R Land Use Category, with respect to

both watershed and zoning limitations, are intended to be 55% for single family detached, 65% for multifamily and single family attached and 85% for commercial.

(c) Such impervious cover limits will be further detailed in the Whisper Valley PUD.

Section 3.08 Open Space

(a) **Categories of WV Open Space.** The portion of Whisper Valley designated as Land Use Category OS (the "**WV Open Space**") shall consist of the two (2) following categories:

(1) **Signature Park.** WV Developer shall convey to the City at no expense to the City, in compliance with City regulations and policies on the dedication of parkland, the portion of Whisper Valley depicted in green on Exhibit "F" hereto (the "**Signature Park**") to the City or to any other entity directed by the City upon request at any time after a plat for any portion of the WV Property has been filed. Before or concurrently with the formation of the Whisper Valley PUD, the City and WV Developer shall mutually agree on whether all of the Signature Park will be dedicated at one time or if portions of the Signature Park will be dedicated to the City over time as adjacent land within Whisper Valley is platted. Based on WV Developer's agreement to so dedicate the Signature Park and the Private Open space as provided below, WV Developer will fulfill its parkland dedication requirement for nine thousand twenty eight (9028) units in the development of Whisper Valley and Indian Hills pursuant to Section 25-1-601 *et seq.* of the City Code, therefore no parkland dedication fees will be required in Whisper Valley or Indian Hills unless that number of units is exceeded. Before or concurrently with the formation of the Whisper Valley PUD, WV Developer and the City shall enter into a **License and Development Agreement** (herein so called) covering the ownership, improvement and maintenance of the Signature Park, and at the City's option the Private Open Space, in accordance with the terms set forth on Exhibit "H" attached hereto. Since the Signature Park (or portions thereof) will be conveyed prior to WV Developer's development of the portions of the property adjacent to Signature Park, the City shall grant to WV Developer in the License and Development Agreement temporary access, maintenance and construction easements over portions of the Signature Park as may be necessary to allow WV Developer to complete its development work and to install the improvements set forth in Section 3.08(f) hereof. Public access to and use of the Signature Park shall be provided in accordance with the City Code, City park rules, and other applicable law.

(2) **Private Open Space.** Subject to Section 3.08(c) below, WV Developer shall reserve a portion of Whisper Valley as "**Private Open Space**" (herein so called) for the benefit of some or all of the residents, tenants and invitees of the owners of Whisper Valley. WV Developer may develop the Private Open Space only as pocket parks, neighborhood parks, and open space corridors. General descriptions and illustrations of these are generally depicted on Exhibit "G" (*Open Space and Neighborhood Parks Improvements Illustrations*) attached hereto, as well as the brown areas depicted on Exhibit "F" attached hereto; provided, however, the descriptions and

illustrations depicted on Exhibit "G" are set forth for illustrative purposes only and Developer shall not be required to build any neighborhood park exclusively in conformity with any such specific description or illustration. Subject to Section 3.08(c) below, Developer shall maintain the Private Open Space.

(b) **Required WV Open Space Acreage.** In no event will the portion of Whisper Valley designated as WV Open Space, including the Signature Park and Private Open Space, be less than seven hundred (700) acres, in the aggregate.

(c) **Transfer / Maintenance of Private Open Space.** Pursuant to the terms of this Agreement, WV Developer shall be required to sell, gift, lease, or otherwise convey (collectively, "**transfer**") the Private Open Space to the City, a Home Owner's Association, Open Space Owners Association, non-profit organization, conservancy organization or other similar type entity reasonably acceptable to the City. In connection with the transfer of the Private Open Space, WV Developer shall file deed restrictions reasonably acceptable to the City against the Private Open Space in the Official Records of Travis County, Texas that are consistent with the provisions contained in Section 3.08(e) and (f). Notwithstanding the above, if at any time during the term of this Agreement, WV Developer intends to transfer all or a portion of the Private Open Space, WV Developer shall first offer to transfer (at no charge to the City) such portion of the Private Open Space to the City (the "**Offer**"). The City shall have a period of ninety (90) days from the date of its receipt of the Offer to notify WV Developer in writing of its intent to accept a transfer of the Private Open Space pursuant to the terms and conditions of the Offer. If the City fails to respond to such offer within such 90-day period, the City shall be deemed to have refused such Offer. In the event any portion of the Private Open Space is transferred to the City, City will negotiate in good faith the terms of an agreement with WV Developer for the maintenance of such Private Open Space for a term of not less than 20 years, and maintenance of such Private Open Space may be funded by the proceeds of by a maintenance and operation PID if approved by the City at the City's discretion or through proceeds that are funded through a homeowner's association.

(d) **IH Open Space.** Any open space requirements for Indian Hills will be detailed in the Indian Hills Zoning Ordinance.

(e) **Prohibited Uses.** Any activity on or use of the WV Open Space or IH Open Space (collectively, the "**Open Space**") inconsistent with the purposes of this Section or the License and Development Agreement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited within the Open Space:

(1) **Biocides.** There shall be no use of pesticides or biocides, including, but not limited to insecticides, fungicides, rodenticides, and herbicides, except as permitted by the approved PARD Integrated Pest Management System.

(2) **Dumping.** There shall be no storage or dumping of ashes, trash, garbage or hazardous materials, except for waste attributable to normal park usage.

(3) Storage Tanks. There shall be no placement or use of any underground storage tanks for petroleum products within the Open Space, unless approved in advance by the City.

(4) License and Development Agreement. There shall be no development before execution of the License and Development Agreement.

(f) **Permitted Activities**. The following activities shall be permitted within the Open Space:

(1) Water Quality and Detention Controls. Developers shall have the right to construct and maintain water quality and detention controls in the Open Space to serve the Projects, provided such improvements must be designed, constructed and maintained as aesthetic amenities and in accordance with the Applicable Requirements and, if part of the Signature Park, must be integrated into the park development plan in the License and Development Agreement to ensure compatibility with recreational features.

(2) Nature Trails. Developer shall have the right to construct nature trails and related improvements within the Open Space, provided that if located in the Signature Park their location and design must be integrated into the park development plan in the License and Development Agreement.

(3) Other Utilities and Improvements. Developer (or any applicable utility company [subject to agreed upon easements or use agreements]) shall have the right to place landscaping, utilities, road crossings and drainage discharge points within the Open Space to serve the Projects, provided such improvements must be designed, constructed and maintained in accordance with the Applicable Requirements and, if part of the Signature Park, must be integrated into the park development plan in the License and Development Agreement.

(4) Recreational Amenities. Developer shall have the right to construct pedestrian trails/path/bridges, sports fields, community swimming pools and related facilities, fitness facilities, playgrounds, equestrian facilities, amenity centers or other recreational amenities within the Open Space, provided that if located on the Signature Park, or on any Private Open Space the City has accepted under Section 3.08(c), such improvements must be open to the public and approved by the City, such approval not to be unreasonably withheld, conditioned or delayed.

(5) Signage. Developer shall have the right to install and maintain project identity signage within the Open Space, subject to any conditions or limitations provided in the Whisper Valley PUD, and if applicable, the park development plan in the License and Development Agreement.

(6) Notwithstanding anything to the contrary contained herein, in no event shall the WV Developer use more than twenty seven and four tenths (27.4) acres of the surface of the Open Space for a private use described in subsections (3) and (5) above

without the prior written consent of the City.

Section 3.09 Signage within Whisper Valley. Commercial developments within portions of Whisper Valley (i) designated "C" shall be governed by the requirements set forth in the Commercial Sign District of the City Code and (ii) designated as MU or R shall be governed by the requirements set forth in the Neighborhood Commercial Sign District of the City Code.

Section 3.10 Transportation Analysis. In recognition of the major transportation corridors that surround and bisect the Projects, Developers will provide the City with (i) a Traffic Impact Analysis covering Whisper Valley ("WV TIA") and (ii) a Traffic Impact Analysis covering Indian Hills ("IH TIA"). The WV TIA shall be in accordance with the Traffic Impact Analysis Scope and Study Area issued by the City dated October 31, 2008 and the WV TIA shall be deemed to satisfy the submittal requirements for the Whisper Valley PUD. The IH TIA shall be in accordance with the Traffic Impact Analysis Scope and Study Area issued by the City dated November 7, 2008 and the IH TIA shall be deemed to satisfy the submittal requirements for the Indian Hills Zoning Ordinance. Thereafter, in connection with proposed Development in the Projects that generates 2000 trips or more per day, a subsequent traffic impact analysis ("Subsequent TIA"), limited in scope, may be required if the Director determines a Subsequent TIA is reasonably necessary for the purposes of determining the need for and analyzing streets within the Projects, driveways, traffic signals, turn lanes, or other traffic improvements in the vicinity of such proposed Development. Before approval of the Whisper Valley PUD, the City and the Whisper Valley Developer shall agree on improvements to Taylor Lane to be constructed or funded by the Whisper Valley Developer to accommodate the development densities on the WV Property.

Section 3.11 Dedicated Review Team. The City will establish and maintain until full buildout of the WV Property and IH Property a dedicated permit review team in the Watershed Protection Department, Planning and Development Review Department, and Austin Water Utility, or their successor departments, who will be responsible for the review, processing and approval of all subdivision plats, site development permits and all other permits for development within the Projects which are normally processed by such departments, or their successor departments (the "**Dedicated Review Team**"). The Dedicated Review Team will be familiar with the terms and provisions of this Agreement, and other issues particular to Whisper Valley and Indian Hills and, accordingly, will be in a position to more efficiently process and expedite applications for permits, subdivision plat approvals and site development permit approvals for projects within the Projects. The initial Dedicated Review Team will be designated to Developers by the City Manager in writing within thirty (30) days after the approval of the Whisper Valley PUD. All development review, although conducted by Dedicated Review Team, will be subject to the then current City development review processes and procedures.

Section 3.12 Conditions. The provisions of Article III are subject to the conditions described in Section 9.01 below.

Section 3.13 Phased Development. The City acknowledges that when and if

the Projects develop, they will likely develop, and infrastructure and amenities will be constructed, over an extended period of time in numerous phases which will be more clearly defined in the Whisper Valley PUD and the Indian Hills Zoning Ordinance, as applicable.

Section 3.14 Affordable Housing.

(a) At least ten percent (10%) of the rental housing on the WV Property and the IH Property must be affordable to a household whose income is equal or less than sixty percent (60%) of the median family income in the Austin metropolitan statistical area ("Affordable Rental Requirement"). At least ten percent (10%) of the owner occupied housing on the WV Property and the IH Property must be affordable to a household whose income is equal or less than eighty percent (80%) of the median family income in the Austin metropolitan statistical area ("Affordable Ownership Requirement"). Affordable housing provided under this section cannot be used to meet affordable housing requirements for a Vertical Mixed Use bonus or exception, and vice-versa.

(b) Rental. The Rental Requirement shall be based on number of units and calculated on an apartment project-by-apartment project basis. The number of single and multi-bedroom units that are affordable shall coincide with the ratio of total single and multi-bedroom units for the applicable project. For example, if you have a three hundred (300) unit apartment complex and one hundred (100) units are multi-bedroom units, then thirty (30) units will be required to meet the Affordable Rental Requirement and ten (10) units out of those thirty (30) units must be multi-bedroom units. The affordable units within any given apartment project shall be interspersed with market rate units.

(c) Ownership. The Affordable Ownership Requirement for condo-style projects shall be based on number of units and calculated on a condo project-by-condo project basis. Condo style projects shall follow the same multi-bedroom unit requirements as are set forth for apartments in subparagraph (b) above. For other forms of single family housing (either attached or detached), affordability shall also be calculated based on the number of units and, to the extent economically feasible, shall be spread across the various product types within Whisper Valley and Indian Hills. Notwithstanding the foregoing, if the WV Developer provides more affordable rental units in any given apartment project than the ten percent (10%) required per subparagraph (b) above, then the number of units required to meet the Affordable Ownership Requirement in Whisper Valley shall be reduced (i) on a 1.5:1 ratio for up to three percent (3%) of the ten percent (10%) Affordable Ownership Requirement for Whisper Valley; and (ii) on a 4:1 ratio for up to an additional two percent (2%) of the ten percent (10%) Affordable Ownership Requirement for Whisper Valley. Provided, however, in no event shall the number of units required to meet the Affordable Ownership Requirement in Whisper Valley be reduced below five percent (5%) of total ownership units through the method described above.

Article IV.

AMENDMENTS

Section 4.01 Amendment to Agreement. This Agreement may be amended only by a written agreement signed by the City, the WV Developer, and the IH Developer. In addition, as long as WV Developer owns any portion of Whisper Valley, WV Developer and the City may amend those Sections of this Agreement applicable only to Whisper Valley without the joinder of the IH Developer or any other landowner. In addition, as long as IH Developer owns any portion of Indian Hills, IH Developer and the City may amend those Sections of this Agreement applicable only to Indian Hills without the joinder of the WV Developer or any other landowner. Notwithstanding the foregoing, any amendment to this Agreement affecting only a portion of the Projects requires the consent and joinder only of the City and any owner of the land within such portion of the Projects. Notwithstanding the foregoing, minor modifications to this Agreement may be made by administrative amendment entered into by the Director and any owner so requesting, including, without limitation, in accordance with Section 3.02. Administrative amendments may include minor deviations from the provisions hereof in order to protect natural features, address unusual site conditions, compensate for some practical difficulty or some unusual aspect of the Projects, or due to the fact that the type of use makes compliance with applicable standards or requirements in the Code or this Agreement unreasonable or impractical.

Article V.

ANNEXATION

Section 5.01 Annexation.

(a) **Limited Purpose Annexation.** By the execution and in consideration of the mutual covenants of this Agreement, WV Developer agrees to and requests the annexation of Whisper Valley into the City for the limited purposes of planning and zoning only and IH Developer agrees to and requests the annexation of Indian Hills into the City for the limited purposes of planning and zoning only (collectively, "**Limited Purpose Annexation**"). The City agrees to cause the Limited Purpose Annexation to occur concurrently with the effective date of the Whisper Valley PUD and the Indian Hills Zoning Ordinance but in no event prior to the formation of the WV PID pursuant to the WV PID Agreement and the formation of the IH PID pursuant to the IH PID Agreement.

(b) **Whisper Valley Full Purpose Annexation.** Pursuant to Section 43.127(a) of the Texas Local Government Code, WV Developer hereby waives the City's obligation to annex Whisper Valley for full purposes within three (3) years of the date Whisper Valley is annexed for limited purposes pursuant to Section 5.01(a) above. WV

Developer requests that after Whisper Valley is annexed for limited purposes that the City, at its option but not obligation, annex for full purposes all or portions of the WV Property under the following terms and according to the following schedule, but in no event prior to the date which is fifteen (15) years following the date of the WV Limited Purpose Annexation:

(1) For parts of the WV Property for which PID bonds have been issued to pay for public improvements, or for which the Developer has in good faith requested that the City issue PID bonds to pay for public improvements, as evidenced by the Developer's expenditure of necessary amounts for market studies, financial analysis, legal counsel, and other professional services and due diligence necessary to support the request to the full degree that the City Council may act on it and issue PID bonds, the City may full purpose the area upon the retirement of all outstanding PID bonds and the release of all WV PID assessments (other than any M&O Assessments) against the portion of the WV Property to be annexed;

(2) Concurrent with the annexation of any land pursuant to Section 5.01(b)(1), the City may annex any portions of Whisper Valley necessary to establish contiguity between the land annexed and the then-existing full purposes City limits, provided, however, unless otherwise required by law or authorized in writing by WV Developer or the owner of the property affected the maximum width annexed for such contiguity purposes shall be no greater than, at the City's option, either (a) fifty (50) feet in width whether over land or adjacent to existing right of way, or (b) the width of an existing right of way if the City elects to annex right of way to establish contiguity. The City shall negotiate with WV Developer regarding the location of land annexed to establish contiguity. In the event the City and WV Developer do not reach agreement on the location of such land annexed for contiguity, the City first shall attempt to establish contiguity along or adjacent to existing public rights of way, rather than annexing over land, to the extent feasible in the City's reasonable determination; or

(3) The City may annex for full purposes any portion of Whisper Valley which remains unannexed forty-four (44) years and six (6) months from the Effective Date of this Agreement.

During the period which is fifteen (15) years following the date of the WV Limited Purpose Annexation, the City shall not annex any part of Whisper Valley for full purposes except as provided in any one of subsections 5.01(b)(1) through (3) above. Thereafter, this Agreement does not prohibit the City from exercising its authority under law to annex for full purposes any part of the WV Property for which PID bonds have not been issued to pay for public improvements or for which the Developer has not in good faith requested that the City issue PID bonds to pay for public improvements.

(c) **Indian Hills Full Purpose Annexation.** Pursuant to Section 43.127(a) of the Texas Local Government Code, IH Developer hereby waives the City's obligation to annex Indian Hills for full purposes within three (3) years of the date Indian Hills is annexed for limited purposes pursuant to Section 5.01(a) above. IH Developer requests after Indian Hills is annexed for limited purposes that the City, at its option but not

obligation, annex for full purposes all or portions of the IH Property under the following terms and according to the following schedule, but in no event prior to the date which is fifteen (15) years following the date of the IH Limited Purpose Annexation:

(1) For parts of the IH Property for which PID bonds have been issued to pay for public improvements, or for which the Developer has in good faith requested that the City issue PID bonds to pay for public improvements, as evidenced by the Developer's expenditure of necessary amounts for market studies, financial analysis, legal counsel, and other professional services and due diligence necessary to support the request to the full degree that the City Council may act on it and issue PID bonds, the City may full purpose the area upon the retirement of all outstanding PID bonds and the release of all IH PID assessments (other than any M&O Assessments, if any) against the portion of the IH Property to be annexed;

(2) Concurrent with the annexation of any land pursuant to Section 5.01(c)(1), the City may annex any portions of Indian Hills necessary to establish contiguity between the land annexed and the then-existing full purposes City limits, provided, however, unless otherwise required by law or authorized in writing by IH Developer or the owner of the property affected the maximum width annexed for such contiguity purposes shall be no greater than, at the City's option, either (a) fifty (50) feet in width whether over land or adjacent to existing right of way, or (b) the width of an existing right of way if the City elects to annex right of way to establish contiguity. The City shall negotiate with IH Developer regarding the location of land annexed to establish contiguity. In the event the City and IH Developer do not reach agreement on the location of such land annexed for contiguity, the City first shall attempt to establish contiguity along or adjacent to existing public rights of way, rather than annexing over land, to the extent feasible in the City's reasonable determination; or

(3) The City may annex for full purposes any portion of Indian Hills which remains unannexed forty-four (44) years and six (6) months from the Effective Date of this Agreement.

During the period which is fifteen (15) years following the date of the WV Limited Purpose Annexation, the City shall not annex any part of Indian Hills for full purposes except as provided in any one of subsections 5.01(c)(1) through (3) above. Thereafter, this Agreement does not prohibit the City from exercising its authority under law to annex for full purposes any part of the IH Property for which PID bonds have not been issued to pay for public improvements or for which the Developer has not in good faith requested that the City issue PID bonds to pay for public improvements.

(d) The Parties stipulate that the prerequisites for the City's annexation of the Projects under Section 43.035, Local Government Code, have been met.

Article VI.

UTILITIES

Section 6.01 Water Service.

(a) Whisper Valley is currently located within the area covered by Manville's Certificate of Convenience and Necessity ("**Manville CCN**"). It is anticipated that the City and Manville may enter into an Agreement for Joint Water Service and Other Matters (including any similar or substitute agreement, collectively referred to herein as the, "**Joint Water Agreement**") which will, among other things, provide for the transition of retail water service over time from Manville to the City for Whisper Valley, and potentially other areas within the City's ETJ. Subject to the execution of the Joint Water Agreement or the decertification or other release of the Manville CCN to the City, the City agrees to provide retail water service to Whisper Valley in accordance with its service, rate and extension policies applicable to similarly situated properties within the City's service area (as such may be modified in the Joint Water Agreement).

(b) Subject to execution of the Joint Water Agreement by the City and Manville, the Parties intend to enter into a Water Infrastructure and Cost Reimbursement Agreement ("**Water Agreement**") generally in accordance with the terms set forth on Exhibit "M" attached hereto.

(c) If the City and Manville do not execute the Joint Water Agreement on or before the limited purpose annexation of Whisper Valley, then (1) retail water service for Whisper Valley will be provided by Manville (unless otherwise agreed to by the City and Developer) and (2) the Parties intend to enter into the Water Agreement generally in accordance with the terms set forth on Exhibit "L" attached hereto.

(d) The City agrees to provide retail water service to Indian Hills in accordance with Service Extension Request Number 2615, subject to final approval by the City and as it may be modified by or subject to the terms of the Water Agreement.

(e) Developer agrees to build all water infrastructure in accordance with design criteria and specifications of the City, and pay all associated inspection fees with respect to the applicable utility provider and the City.

(f) WV Developer agrees if the City is not the retail water service provider for any portion of the WV Property, then any assessments or any other funding mechanisms approved by the City for the WV PID shall not be used for funding or subsidizing any water service or water infrastructure for such portion of the WV Property not served by the City. Notwithstanding the above, if WV Developer determines it is in the best interest of the development of the WV Property to pursue civil remedies or Texas Commission of Environmental Quality administrative procedures to have the WV Property decertified from Manville and have the City become the permanent retail water

service provider, the City shall allow all reasonable and associated legal and engineering costs of the WV Developer to be reimbursed by the WV PID, subject to approval by the Attorney General's office as an eligible expense.

Section 6.02 Wastewater Service. The City agrees to provide retail wastewater services to Whisper Valley in accordance with that certain Cost Reimbursement Agreement by and between the City and Developer dated effective June 21, 2007, as the same may be amended from time to time. The City agrees to provide retail wastewater services to Indian Hills in accordance with Service Extension Request Number 2630.

Section 6.03 Electric Service. For those portions of the Projects within the City's service area, the City agrees to provide electric service to the Projects in accordance with its service, rate and extension policies applicable to similarly situated properties within the City's service area. The City acknowledges that portions of the Projects are within a dual electric service area and that electric service may be provided to those portions of the Projects by other providers.

Section 6.04 Fees. The City agrees to provide utility services to the Projects in accordance with rates and other policies applicable to all other similar situated properties and City utility customers.

Article VII.

ENVIRONMENTAL PROTECTION

Section 7.01 Environment Goals. The WV Developer and IH Developer shall ensure Development within Whisper Valley or Indian Hills, as applicable, meets the goals described on Exhibit "J" (*Environmental Goals*).

Section 7.02 Critical Environmental Features.

(a) Protection of bluffs, canyon rimrock, springs, wetlands and other critical environmental features ("CEF's") within the Projects will be in accordance with the Land Development Code as of the Effective Date. Notwithstanding the foregoing, the Parties agree and acknowledge that an environmental assessment of Whisper Valley has been conducted by Developer and submitted to and approved by the City (the "ESA"). Pursuant to the ESA, the following CEF's were indentified and the parties have agreed to the following prescribed treatments of such CEF's.

CEF 1 (pond 1) - preserve with full 150ft setback
CEF 2 (pond 2) - preserve with full 150ft setback
CEF 3 (pond 3) - appropriate to mitigate according to ECM 1.3.0(B)(1)(f)(3, 4, 5 or 6)
CEF 4 (pond 4) - preserve with full 150ft setback
CEF 5 (pond 6) - preserve with full 150ft setback
CEF 6 (pond 8) - appropriate to mitigate according to ECM 1.3.0(B)(1)(f)(3, 4, 5 or 6)
CEF 7 (pond 9) - preserve with full 150ft setback
CEF 8 (pond 11) - preserve with full 150ft setback

CEF 9 (wetland 1) - preserve with full 150ft setback
CEF 10 (wetland 2) - appropriate to mitigate according to ECM 1.3.0(B)(1)(f)(3, 4, 5 or 6)
CEF 11 (pond 5) - appropriate to mitigate according to ECM 1.3.0(B)(1)(f)(3, 4, 5 or 6)
CEF 12 (wetland 3) - appropriate to mitigate according to ECM 1.3.0(B)(1)(f)(3, 4, 5 or 6)
CEF 13 (wetland 4) - appropriate to mitigate according to ECM 1.3.0(B)(1)(f)(3, 4, 5 or 6)

Notwithstanding the above, as project plans become further defined, the setbacks referenced above may (at the City's discretion) be further reduced provided that appropriate mitigation is made by Developer.

(b) Notwithstanding anything in the ECM or herein to the contrary, pedestrian facilities (i.e. trails and associated facilities) may be allowed within the required setbacks set forth above if approved by the City at its discretion. Additionally, fencing of setbacks shall not be required.

(c) The CEF's referenced in this Section 7.02 are more particularly described and/or depicted on Exhibit "D" attached hereto.

Section 7.03 IPM. The Projects will include an Integrated Pest Management plan as approved by the Director.

Section 7.04 Pavement Sealants. Notwithstanding Section 3.04, the use of tar sealants or other pavement sealants at the Projects may be prohibited or regulated when such regulations are incorporated into the City Code.

Section 7.05 Grow Green Program. All landscaping in open space [and commercial and multi family projects] within the Projects shall comply with the City's Grow Green Program.

Article VIII.

ROADWAYS AND DRIVEWAYS

Section 8.01 Roadways. The following will apply with regard to roadways platted and/or constructed within Whisper Valley or Indian Hills:

(a) Upon approval from the provider of fire protection and emergency medical service stating no objection to the contrary for proposed roadway facilities, the Planning and Development Review Department of the City, or its successor department, may grant administrative waivers without review by any City board, commission or council to the provisions of the City Code with regard to: private street provisions in Section 25-4-17(A) (Access to Lots), prohibitions on block lengths exceeding the limitations in Sections 25-4-152 (Dead-End Streets) and 25-4-153 (Block Length) of the Land Development Code, taking into consideration topography, traffic circulation and access to pedestrian and transit facilities.

(b) Any private street developed within Whisper Valley will be treated as a "roadway" for purposes of Sections 25-8-341 (Cut Requirements) and (Fill Requirements) of the Land Development Code. Street design and construction of streets, alleys and pedestrian paths may be designed and constructed in accordance with the Standards Criteria Manual, the Standard Specifications Criteria Manual or the standards to be set forth in the Whisper Valley PUD.

(c) The WV Developer has provided alternate street standards proposed for portions of Whisper Valley. The Director may approve alternate street standards under Section 25-6-171 (Standards for Design and Construction) of the Land Development Code.

(d) The Parties recognize and intend that Travis County is responsible for maintaining roadways within Whisper Valley until full purpose annexation.

(e) The City's agreement to the provisions of this Section 8.01 is subject to corresponding approvals or waivers from Travis County to the extent applicable or required.

Section 8.02 Driveway and Access. It is intended that driveways and curb cuts shall be permitted from every lot within a single-family residential area. Notwithstanding the foregoing, Developer acknowledges that certain driveways and curb cuts to public rights-of-way maintained by the State of Texas may be subject to driveway and access standards established by the Texas Department of Transportation. In addition, Developer acknowledges and agrees that the City may prohibit certain driveways and curb cuts if such driveways or curb cuts create a traffic safety hazard.

Article IX.

ANTICIPATED SCHEDULE; REPRESENTATIONS AND WARRANTIES

Section 9.01 Anticipated Schedule.

If the City (i) does not initiate annexation the Projects for the limited purposes of planning and zoning only (as applicable) and successfully limited purpose annex the Project within the time allowed by law, (ii) fails to approve the Whisper Valley PUD or Indian Hills Zoning Ordinance, (iii) fails to enter into the License and Development Agreement substantially in accordance with the terms set forth on Exhibit "H" attached hereto, or (iv) fails to form the WV PID or IH PID, substantially in accordance with the terms hereof on or before May 1, 2010, this Agreement shall automatically terminate and the request for annexation of Whisper Valley and Indian Hills and the planned unit development land use application for Whisper Valley submitted pursuant to this Agreement shall automatically be withdrawn.

The Parties agree in fact and law that this Agreement does not bind the legislative discretion of the City Council to approve or disapprove any proposed annexation

ordinance, the proposed Whisper Valley PUD, the proposed Indian Hills Zoning Ordinance, the proposed WV PID, or the proposed IH PID. If the City Council does not timely approve the proposed annexation ordinance, the proposed Whisper Valley PUD, the proposed Indian Hills Zoning Ordinance, the proposed WV PID, or the proposed IH PID, or if the City Council approves any of the foregoing in a manner inconsistent with this Agreement without the Developers' consent, the Developers' consent for annexation is withdrawn and this Agreement terminates as the Developers' sole remedy.

Section 9.02 Representations and Warranties of WV Developer.

(a) **Organization and Good Standing.** WV Developer consists of individuals and multiple partnerships and trusts, each of which is duly organized and validly existing in good standing under the laws of the State of Texas, with full power and authority to conduct its business as it is now being conducted, to own or use the properties and assets that it purports to own or use, and to perform all its obligations under this Agreement.

(b) **Authority, No Conflict.** This Agreement constitutes the legal, valid and binding obligation of WV Developer, enforceable against WV Developer in accordance with its terms. WV Developer has the absolute and unrestricted right, power, authority, and capacity to execute and deliver this Agreement and to perform its obligations under this Agreement.

Section 9.03 Representations and Warranties of IH Developer.

(a) **Organization and Good Standing.** IH Developer consists of individuals and multiple partnerships and trusts, each of which is duly organized and validly existing in good standing under the laws of the State of Texas, with full power and authority to conduct its business as it is now being conducted, to own or use the properties and assets that it purports to own or use, and to perform all its obligations under this Agreement.

(b) **Authority, No Conflict.** This Agreement constitutes the legal, valid and binding obligation of IH Developer, enforceable against IH Developer in accordance with its terms. IH Developer has the absolute and unrestricted right, power, authority, and capacity to execute and deliver this Agreement and to perform its obligations under this Agreement.

Section 9.04 Representations and Warranties of the City.

(a) **Organization and Good Standing.** The City is duly organized and validly existing municipal corporation in good standing under the laws of the State of Texas, with full power and authority to conduct its business as it is now being conducted, to own or use the properties and assets that it purports to own or use, and to perform all its obligations under this Agreement.

(b) **Authority, No Conflict.** This Agreement constitutes the legal, valid and binding obligation of the City, enforceable against the City in accordance with its terms. The City has the absolute and unrestricted right, power, authority and capacity to execute

and deliver this Agreement and to perform its obligations under this Agreement.

Article X.

FRUSTRATION OF PURPOSE

Section 10.01 Frustration of Purpose.

(a) If any part of this Agreement is effected or modified in whole or in part as a result of modifications, changes, or amendments to the legal authority for or affecting this Agreement, either by a final judicial decree for which all appeals have expired or been exhausted or the Texas Legislature modifying or amending state law, then the Parties agree and understand that the purpose of this Agreement may be frustrated.

(b) If any Party contends that a frustration of purpose has occurred, that Party shall notify all other Parties in writing of the alleged frustration of purpose and the factual and legal basis for that claim.

(1) The Parties agree that upon receipt of Notice of an alleged frustration of purpose, they will meet and confer and attempt to amend or revise the Agreement to accomplish to the greatest degree practical the same purpose and objective of the part of this Agreement effected by the frustration of purpose.

(2) If the Parties cannot agree within ninety (90) days of one such Party notifying the other Parties in writing of an alleged frustration of purpose to a mutually agreeable amendment or revision to this Agreement, any Party may thereafter file a court action, or as provided in Article XII a Notice of Arbitration, seeking a declaration that a frustration of purpose has occurred. If no such Party files an action within thirty (30) days of the 90-day period just described, then no frustration of purpose will have occurred, and this Section 10.01 will be inapplicable unless and until a Party sends another notification pursuant to Section 10.01b. If a court of competent jurisdiction or an arbitration panel provided for in Article XII issues an order, which becomes final because of the exhaustion of all appellate rights, ("final order") which final order adjudicates that the Agreement has had its purpose frustrated, the Parties agree to again attempt for ninety (90) days to amend or modify this Agreement to the extent necessary to address the frustration of purpose declared by the final order. The Parties agree that they will attempt to amend or revise this Agreement to the greatest degree practical to accomplish the same purpose and objective of the part of this Agreement that has been frustrated as declared by the court or arbitration panel. If the Parties cannot agree on any such amendment or revision within ninety (90) days from the date of the final order, then any Party may submit the issue to arbitration under Article XII.

Article XI.

DEFAULT AND REMEDIES FOR DEFAULT

Section 11.01 Preventative Default Measures. The Parties presently enjoy a good working relationship and understand the meaning and intent of this Agreement; however, the Parties recognize that individual representatives of each of the Parties will likely change over the course of this Agreement, particularly those of the City. The City accordingly agrees that oversight of the implementation of this Agreement shall at all times during its term be assigned directly to an Assistant City Manager (or equivalent). In the event of a dispute involving an interpretation of any other aspect of this Agreement, upon either WV Developer's or IH Developer's request, such Assistant City Manager shall convene a meeting of the applicable Parties as soon as reasonably practical and use all reasonable efforts to avoid processing delays and to resolve the dispute and carry out the spirit and purpose of this Agreement.

Section 11.02 Default. It shall be a default under this Agreement by a Party, if such Party shall fail to perform any of its obligations under this Agreement and such failure shall remain uncured following the expiration of thirty (30) business days after written notice of such failure. However, in the event the default is not monetary in nature, and of a nature that cannot be cured within such thirty (30) day period, the defaulting Party shall have a period of time as long as reasonably necessary in which to cure the default in question, so long as such defaulting Party is diligently pursuing cure of the default. Notwithstanding the foregoing, a default by WV Developer or the City under this Agreement with respect to Whisper Valley that does not affect or involve IH Developer shall not constitute a default by IH Developer with respect to Indian Hills, and in such event, the terms of this Agreement shall remain in full force and effect and bind the City and IH Developer in all respects as this Agreement affects Indian Hills, including, without limitation, the Indian Hills Zoning Ordinance and the IH PID; a default by IH Developer or the City under this Agreement with respect to Indian Hills that does not affect or involve WV Developer shall not constitute a default by WV Developer with respect to Whisper Valley, and in such event, the terms of this Agreement shall remain in full force and effect and bind the City and WV Developer in all respects as this Agreement affects Whisper Valley, including, without limitation, the Whisper Valley PUD and the WV PID.

Section 11.03 City's Default. In addition, the City shall be in default under this Agreement if the City unreasonably withholds the approval or release of any proposed development, development permit, utility service extension request and/or development application with respect to Development on any portion of Whisper Valley or Indian Hills that complies with the terms of this Agreement. The City shall also be in default if it imposes any requirements, standards, moratoria, or interim development controls upon Whisper Valley or Indian Hills that are in conflict with or limit the express provision of this Agreement. The City shall not, however, be in default based upon the imposition of

temporary moratoria due to an emergency constituting an imminent threat to the public health or safety, provided that any such moratorium will continue with respect to the Projects only during the duration of the emergency.

Section 11.04 Remedies between the City and Developers. Should any default remain uncured after notice to the defaulting party as provided in Section 11.02 the non-defaulting Party, whether WV Developer, IH Developer, or the City, may pursue any remedy that is available at law or in equity at the time of the breach, including, but not limited to: damages, including damages for delays in development approval caused by a City default, code enforcement, mandamus, injunctive relief, termination of the remaining term of the Agreement, rescissions, reverter, and/or specific performance. The remedies listed in this paragraph are cumulative. For purposes of this Section 11.04 only, "WV Developer" and "IH Developer" refer only to the signatories to this Agreement, both the individuals and the entities, but not the individuals or the entities that constitute or comprise the signatories that are entities.

Section 11.05 Remedies between the City and Third Parties. Should any default between a third party (that is, any individual or entity other than WV Developer or IH Developer, as such terms are defined in Section 11.04), and the City remain uncured after notice to the other as provided in Section 11.02, the City may pursue the remedies listed in Section 11.04 against the third party, and the third party may pursue all remedies listed in Section 11.04 against the City except that a third party shall not be able to pursue the remedies of termination, rescission, or reverter, such remedies belonging exclusively to WV Developer and IH Developer (as such terms are defined in Section 11.04).

Section 11.06 Mediation. In order to avoid unnecessary litigation, in the event that any Party fails to cure an alleged default within the cure period set out in Section 11.02 above, then if requested by another Party, prior to seeking any form of relief from a court of law or agency of competent jurisdiction, each Party agrees to enter into mediation concerning the alleged default for a period of not more than thirty (30) days prior to the filing of any court action. Nothing in this Agreement shall be construed to limit the Parties from mediating a default after any court or agency action may have been filed.

Section 11.07 No Liability for Action of Others. Except as expressly set forth: (a) the liabilities, obligations and responsibilities of each owner, including WV Developer or IH Developer, their successors and assigns, under this Agreement are several, and not joint; and (b) no owner, or successor or assign, of any portion of Whisper Valley or Indian Hills will be in default under this Agreement or otherwise liable or responsible for any default which is not caused by such landowner or by any person acting by, through or under such owner or successor or assign. No officer, agent, or employee of the City shall be charged personally with any liability nor held liable to the Developers under any term or provision of this Agreement or because of the execution or attempted execution of this Agreement or any breach or alleged breach of this Agreement.

Article XII.

ARBITRATION

Section 12.01 Agreement to Arbitrate. The Parties agree that certain disputes that may arise between or among Developers, their successors and assigns, and the City may be submitted to binding arbitration (an “**Arbitrable Dispute**”). An Arbitrable Dispute may be resolved by binding arbitration solely and exclusively in Austin, Travis County, Texas.

(a) **Meaning of Arbitrable Dispute.** Only certain disputes may be the subject of binding arbitration. The Parties agree that the arbitration panel shall not have jurisdiction to determine the arbitrators’ jurisdiction or to determine arbitrability. Accordingly, if the Parties do not agree that a dispute is an Arbitrable Dispute, a state district court in Travis County, Texas shall determine the arbitrators’ jurisdiction and/or arbitrability in a summary proceeding. Disputes concerning the following issue, and no others, are an Arbitrable Dispute under this Agreement: whether a frustration of purpose has occurred as described in Article X of this Agreement and the appropriate modifications to this Agreement to fulfill its purpose to the greatest degree practicable. All other disputes shall be resolved only in state district court in Travis County, Texas. The Parties also expressly agree, without limiting the variety of non-Arbitrable Disputes, that the City shall not be compelled to arbitrate any claim for prohibitive or compulsory injunctive relief by the City against WV Developer or IH Developer, as applicable, seeking to enforce such Developer’s compliance with the terms of this Agreement.

Section 12.02 Binding Arbitration. Upon the request of any Party, whether made before or after the institution of any legal proceeding, any Arbitrable Dispute between or among the Parties must be resolved by binding arbitration in accordance with the terms and provisions of this Article XII. Any Party may by summary proceeding bring an action in court to compel arbitration of any Arbitrable Dispute.

Section 12.03 Arbitration Remedy. The Parties agree that the arbitration panel’s remedy powers are limited. The arbitration panel may only issue a declaratory judgment (the “Arbitration Remedy”) with regard to an Arbitrable Dispute. The arbitration panel may not award money damages, grant injunctive relief, or issue any other form of legal or equitable relief that is not expressly provided for in this Section 12.03.

Section 12.04 Governing Rules. This Agreement is governed by the Federal Arbitration Act. All Arbitrable Disputes between the Parties may be resolved by binding arbitration in accordance with the terms of this Agreement and the commercial arbitration rules of the American Arbitration Association (the “**Arbitration Rules**”). In the event of any inconsistency between this Agreement and the Arbitration Rules, this Agreement shall control. Judgment upon this Arbitration Remedy rendered by the arbitrator shall be binding and may be entered in state district court in Travis County, Texas. Such judgment on an Arbitrable Dispute shall not be subject to appeal.

Section 12.05 Exceptions to Arbitration; Preservation of Remedies. As described in this Article XII, the arbitration rights of the Parties to this Agreement are limited. Additionally, even for an Arbitrable Dispute, no provision of, or any exercise of any arbitration rights shall limit the right of any Party, and the Parties shall have the right during any Arbitrable Dispute to see, use and employ ancillary or preliminary remedies, judicial or otherwise, including without limitation, rights and remedies relating to (a) exercising otherwise lawful self-help remedies or (b) obtaining provisions or ancillary remedies such as injunctive relief, sequestration or attachment from a state district court in Travis County, Texas, during or after the pendency of any arbitration.

Section 12.06 Statute of Limitation. All statutes of limitation that would otherwise be applicable shall apply to any arbitration proceeding under this Agreement.

Section 12.07 Exhaustion of Remedies. The agreement to arbitrate Arbitrable Dispute reflected in this Article XII shall not in any way alter any otherwise existing requirement that a Party exhaust its remedies with the City prior to seeking judicial relief.

Section 12.08 Appointment of Arbitrators; Scope of Remedy. All arbitration proceedings shall be submitted to an arbitrator. The Parties agree to select a mutually agreeable and neutral arbitrator. The arbitrator shall resolve any Arbitrable Dispute in accordance with the applicable substantive law and this Agreement. The arbitrator may not grant any remedy other than an Arbitration Remedy.

Section 12.09 Other Arbitration Manners. To the maximum extent practicable, an Arbitrable Dispute shall be concluded within ninety (90) days of the filing of the Arbitrable Dispute. The Texas Rules of Civil Procedure and the Texas Rules of Evidence will apply in any arbitration of an Arbitrable Dispute. The provisions of this agreement to arbitrate Arbitrable Disputes shall survive the termination, amendment or expiration of the Term of this Agreement, unless the Parties otherwise expressly agree in writing.

Section 12.10 Arbitration Expenses. Each of the Parties to any arbitration of any Arbitral Dispute shall pay their respective share of the arbitration fees and any costs of the arbitration as those fees and costs come due.

Article XIII.

MISCELLANEOUS PROVISIONS

Section 13.01 Effective Date. The "Effective Date" of this Agreement shall be June 18, 2009.

Section 13.02 Term. This Agreement shall commence and bind the Parties on the Effective Date and continue in three fifteen (15) year periods, which second and third (15) year period are hereby agreed to and are automatically renewing without any further

actions of the Parties until a date which is forty-five (45) years from the Effective Date, unless sooner terminated by express written agreement executed by both Parties (the "Term").

Section 13.03 Termination. This Agreement may be terminated as to all of Whisper Valley only by express written agreement executed by the City and WV Developer. This Agreement may be terminated as to all of Indian Hills only by express written agreement executed by the City and IH Developer. In the event this Agreement is terminated by mutual agreement of such Parties or by its terms, the Parties shall promptly execute and file a record in the Official Public Records of Travis County, Texas, a document confirming the termination of this Agreement with respect to the WV Property or the IH Property, as applicable, and such other documents as may be appropriate to reflect the basis upon which such termination occurs.

Section 13.04 Intentionally Deleted.

Section 13.05 Agreement Binds Successors and Runs with the Land. This Agreement shall bind and inure to the benefit of the Parties, their successors and assigns. Subject to Section 13.07 below, the terms of this Agreement shall constitute covenants running with the lands comprising WV Property and the IH Property and shall be binding on all future developers and owners of the property within the Projects. A memorandum of this Agreement, in the form attached as Exhibit "K" shall be recorded in the Official Public Records of Travis County, Texas only after the conditions precedent in Section 9.01 above are satisfied. Nothing in this Agreement is intended to impose obligations on individual owners of platted single family duplex, townhouse or attached single family residential lots, except as set forth in Section 13.06.

Section 13.06 Restrictive Covenant. Upon the transfer of any portion of the WV Property prior to Limited Purpose Annexation, WV Developer, its successors or assigns, shall execute and record a restrictive covenant expressly restricting the conveyed property to the applicable terms of this Agreement; provided, however, with respect to a fully developed and improved lot within Whisper Valley acquired by an end-buyer, the restrictive covenant shall only restrict such lot to the land use and development regulations set forth in this Agreement, which shall include, without limitation, a restriction that the end-buyer consents to full purpose annexation by the City. Upon the transfer of any portion of the IH Property prior to Limited Purpose Annexation, IH Developer, its successors or assigns, shall execute and record a restrictive covenant expressly restricting the conveyed property to the applicable terms of this Agreement; provided, however, with respect to a fully developed and improved lot within Indian Hills acquired by an end-buyer, the restrictive covenant shall only restrict such lot to the land use and development regulations set forth in this Agreement, which shall include, without limitation, a restriction that the end-buyer consents to full purpose annexation by the City.

Section 13.07 Assignment. Subject to Section 13.07(a) and (b), below, WV Developer may assign this Agreement with respect to all or part of Whisper Valley from time to time to any Party, and IH Developer may assign this Agreement with respect to

all or part of Indian Hills from time to time, so long as the assignee has demonstrated that the assignee has the financial and managerial capacity, the experience, and expertise to perform any duties or obligations so assigned and so long as the assigned rights and obligations are assumed without modifications to this Agreement. WV Developer or IH Developer, as applicable, shall provide the City thirty (30) days prior written notice of any such assignment. Upon such assignment or partial assignment, WV Developer or IH Developer, as applicable, shall be fully released from any and all obligations under this Agreement and shall have no further liability with respect to this Agreement for the part of the Projects so assigned.

(a) This Agreement shall run with the land; provided however, that the provisions contained in Article II (PID), Sections 3.01 (Whisper Valley PUD, Indian Hills Development), 3.08 (Open Space), Articles V (Annexation) and VI (Utilities) of this Agreement shall be the individual requirement of or benefit to (as the case may be) of WV Developer or IH Developer, as applicable, and their Designated Successors and Assigns. Upon any assignment to its Designated Successors and Assigns, WV Developer or IH Developer, as applicable, may request the City to approve the release of such developer from the rights and obligations assigned to any Designated Successor and Assigns, such approval not be unreasonably withheld, conditioned or delayed. Upon such approval by the City, WV Developer or IH Developer, as applicable, shall no longer be liable for the assigned rights and obligations and the City shall look solely to such developer's Designated Successors and Assigns for performance timing. Any sale of a portion of the Projects or assignment of any right hereunder shall not be deemed a sale or assignment to a Designated Successor or Assign unless the conveyance or transfer instrument effecting such sale or assignment expressly states that the sale or assignment is to a Designated Successor or Assign.

(b) Except as provided in the subpart (a) above, Developers and all future owners of all or any portion of the Projects, including, without limitation, any affiliates of WV Developer or IH Developer to which all or any portion of the property is conveyed or contributed, shall have the benefits of this Agreement, and the property may be developed as set forth herein without notice or approval to the City (except as provided in subparagraph (a) above); provided, however, that this Agreement may be amended as otherwise set forth herein. In the case of nonperformance by one owner, the City may pursue all remedies against that nonperforming owner, but will not impede development activities of any performing owner as a result of that nonperformance unless and to the limited extent that such non performance pertains to a City requirement that also is necessary for the performing owner's project, which performing owner may also pursue remedies against the nonperforming owner.

Section 13.08 Entire Agreement. This Agreement and the agreements between the Parties referenced in this Agreement, contain the entire agreement of the Parties. There are no other agreements or promises, oral or written, between the Parties regarding the subject matter of this Agreement. This Agreement can be amended only by written agreement signed by the Parties as provided for in this Agreement. This Agreement and the agreements between the Parties referenced in this Agreement, supersede all prior agreements between the Parties concerning the subject matter of this Agreement.

Section 13.09 Notice. It is contemplated that the Parties will engage in informal communications with respect to the subject matter of this Agreement. However, any formal notices or other communications (“**Notice**”) required to be given by one Party to another by this Agreement shall be given in writing addressed to the Party to be notified at the address set forth below for such Party (i) by delivering same in person, (ii) by depositing the same in the United States Mail; certified or registered, return receipt requested, postage prepaid, addressed to the Party to be notified, (iii) by depositing the same with Federal Express or another nationally recognized courier service guaranteeing “next day delivery” addressed to the Party to be notified; or (iv) by sending same by telefax with confirming copy sent by mail. Notice deposited in the United States mail in the manner described above shall be deemed effective from and after the earlier of the date of actual receipt or three (3) days after the date of such deposit. Notice given in any other manner shall be effective only if and when received by the Party to be notified. For the purposes of notice, the addresses of the Parties shall, until changed as provided below, be as follows:

WV Developer: Club Deal 120 Whisper Valley, Limited Partnership
c/o Douglas H. Gilliland
9285 Huntington Square
North Richland Hills, Texas 76180
Fax: 817-788-1670

With copy to: Drenner & Golden Stuart Wolff, LLP
301 Congress Avenue, Suite 1200
Austin, Texas 78701
Attn: Steven C. Metcalfe
Fax: 512-404-2244

IH Developer: Club Deal 116 Indian Hills Tx, Limited Partnership
c/o Douglas H. Gilliland
9285 Huntington Square
North Richland Hills, Texas 76180
Fax: 817-788-1670

With copy to: Drenner & Golden Stuart Wolff, LLP
301 Congress Avenue, Suite 1200
Austin, Texas 78701
Attn: Steven C. Metcalfe
Fax: 512-404-2244

City: City of Austin
PO Box 1088
Austin, Texas 78767
Attn: City Manager
Fax: 512-974-2833

With copy to: City of Austin
PO Box 1088
Austin, Texas 78767
Attn: City Attorney
512-974-6490

The Parties shall have the right from time to time to change their respective addresses and each shall have the right to specify as its address any other address within the United States of America by at least five (5) days written notice to the other Party. If any date or any period provided in this Agreement ends on a Saturday, Sunday or legal holiday, the applicable period for calculating the notice shall be extended to the first business day following such Saturday, Sunday or legal holiday.

Section 13.10 Standards Not Binding On Other Governmental Entity. The Parties acknowledge that some of the standards, variances, waivers or other provisions set forth in this Agreement may require the approval of a governmental entity other than the City to implement. Developers agree that the City is not responsible for obtaining such approval.

Section 13.11 Estoppel Certificate. Within thirty (30) days after the receipt of a written request by either WV Developer or IH Developer or a current owner of a tract in the Projects, the City will certify in a written instrument duly executed and acknowledged to any person, firm or corporation specified in such request as to (i) the validity and force and effect of this Agreement in accordance with its terms, (ii) modifications or amendments to this Agreement and the substance of such modification or amendments; (iii) the existence of any default to the best of the City's knowledge; and (iv) such other factual matter that may be reasonably requested.

Section 13.12 No Joint Venture. It is acknowledged and agreed by the Parties that the terms of this Agreement are not intended to and shall not be deemed to create any partnership or joint venture among the Parties. The City, its past, present and future officers, elected officials, employees and agents of the City, do not assume any responsibilities or liabilities to any third Party in connection with the development of the Projects.

Section 13.13 Time. Time is of the essence in all things pertaining to the performance of this Agreement.

Section 13.14 Severability. If any provision of this Agreement is illegal, invalid, or enforceable under present or future laws, then, and in that event, it is the intention of the Parties that the remainder of this Agreement shall not be affected.

Section 13.15 Waiver. Any failure by a Party hereto to insist upon strict performance by the other Party of any material provision of this Agreement shall not be deemed a waiver of such provision or of any other provision of this Agreement, and such

Party shall have the right at any time(s) thereafter to insist upon strict performance of any and all of the provisions of this Agreement.

Section 13.16 Applicable Law and Venue. THE CONSTRUCTION AND VALIDITY OF THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS (WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES). Venue for any dispute arising from or related to this Agreement shall be in Travis County, Texas.

Section 13.17 Reservation of Rights. To the extent not inconsistent with this Agreement, each Party reserves all rights, privileges and immunities under applicable laws.

Section 13.18 Further Assurances. Both Parties agree that any time after execution of this Agreement, they will, upon request of the other Party, execute and deliver such further documents and do such further acts and things as may be reasonably necessary or desirable to effectuate the terms of this Agreement.

Section 13.19 Incorporation of Exhibits and Other Documents by Reference. All Exhibits and other documents attached to or referred to in this Agreement are incorporated by reference for the purposes set forth in this Agreement.

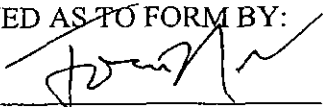
Section 13.20 Exhibits.

Exhibit "A-1" – Description of Whisper Valley
Exhibit "A-2" – Description of Indian Hills
Exhibit "B" – PID Term Sheet
Exhibit "C-1" – Indian Hills Zoning Map
Exhibit "C-2" – Whisper Valley Land Use Plan
Exhibit "D" – Critical Environmental Features
Exhibit "E" – Intentionally Deleted
Exhibit "F" – Signature Park
Exhibit "G" – Open Space and Neighborhood Parks Improvements Illustrations
Exhibit "H" – License and Operation Agreement Term Sheet
Exhibit "I" – Intentionally Deleted
Exhibit "J" – Environmental Goals
Exhibit "K" – Memorandum of Development Agreement
Exhibit "L" – Water Agreement Term Sheet (Indian Hills Only)
Exhibit "L-1" – Phasing Map for Indian Hills Only
Exhibit "M" – Water Agreement Term Sheet (Whisper Valley and Indian Hills)
Exhibit "M-1" – Phasing Map for Whisper Valley and Indian Hills

COUNSEL FOR CITY:

APPROVED AS TO FORM BY:

By:



Tom Nuckols
Assistant City Attorney

EXECUTED in multiple counterparts, each of which shall constitute an original,
this _____ day of _____, 2009.

CITY:

CITY OF AUSTIN,
a home rule city and Texas municipal corporation

By:


Sue Edwards
Assistant City Manager

⁸⁴
EXECUTED in multiple counterparts, each of which shall constitute an original,
this 11 day of August, 2009.

WV DEVELOPER:

CLUB DEAL 120 WHISPER VALLEY,
LIMITED PARTNERSHIP, a Delaware
limited partnership qualified to do business
in Texas

By: CD120 GP, LLC, a Delaware limited
liability company

Its: General Partner

By: 
Douglas H. Gilliland, Manager

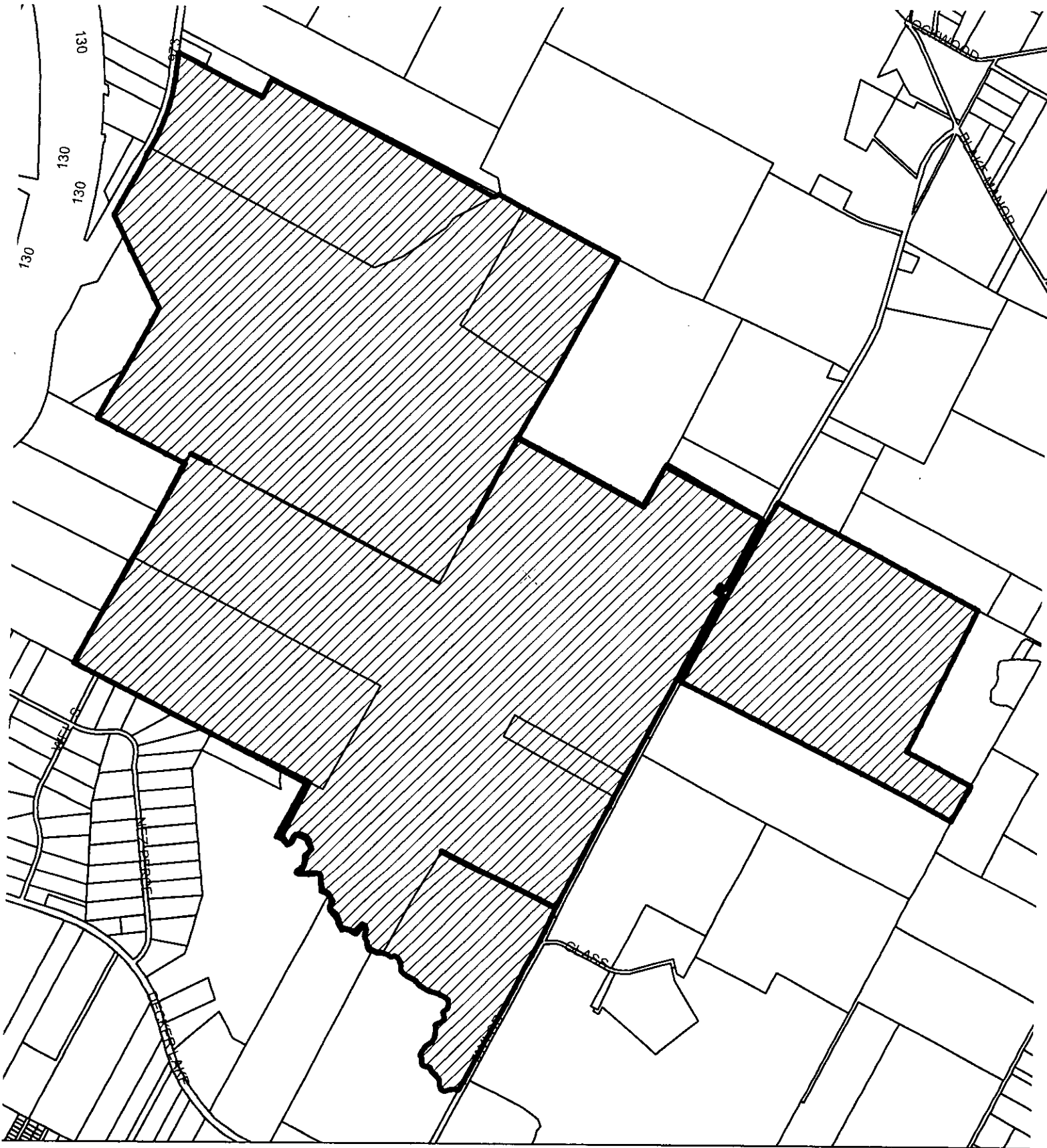
IH DEVELOPER:

CLUB DEAL 116 INDIAN HILLS TX,
LIMITED PARTNERSHIP, a Delaware
limited partnership qualified to do business
in Texas




By: CD116 Indian Hills Tx, LLC, a
Delaware limited liability company

Its: General Partner

By: 
Douglas H. Gilliland, Manager



Legend

-  SUBJECT TRACT
-  PENDING CASE
-  ZONING

ZONING

CASE NUMBER: C814-2009-0094
 ADDRESS: SEE FILE
 AREA: 2065 AC.
 GRID: S23-25, U22-24, T22-24
 CASE MGR: J. RUSTHOVEN



This map has been produced by the Communications Technology Management Dept. on behalf of the Planning Development Review Dept. for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.